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POLITICAL PHILOSOPHY.

PART II.

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UNDER THE SUPERINTENDENCE OF THE SOCIETY FOR
THE DIFFUSION OF USEFUL KNOWLEDGE.

POLITICAL PHILOSOPHY.

BY HENRY, LORD BROUGHAM, F.R.S.

MEMBER OF THE NATIONAL INSTITUTE OF FRANCE,
MEMBER OF THE ROYAL ACADEMY OF NAPLES.

PART II.

OF ARISTOCRACY.

ARISTOCRATIC GOVERNMENTS.



LONDON:

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1846.

TO
THE QUEEN.

MADAM,

By the commands of the Useful Knowledge Society, incorporated by charter of your revered predecessor, King William IV., I lay at Your Majesty's feet the treatise upon Political Philosophy which they have published, with the view of making the Science of Government more generally understood, and of correcting the errors which the violence of conflicting parties, or the zeal of rival theorists, have propagated in all ages and in all countries.

In presuming to solicit Your Majesty's gracious attention to this work, it is fit that I should state how far the Society and how far the author alone are severally answerable for the opinions which it explains and supports.

The Society only undertakes a general responsibility for the doctrines delivered in the Treatises published under its superintendence. A general

coincidence of opinion alone is to be expected in a body so variously composed. That all its members are agreed in holding fast by the principles of our constitution, in cherishing those sentiments which lead to the improvement as well as the preservation of our institutions, and in favouring whatever may promote the peace of the world, may safely be affirmed. The details connected with those fundamental positions are to be regarded as the work and as the doctrine of the writer rather than of his colleagues.

But there is one subject upon which they both equally concur without any shade of difference:— That Your Majesty may long reign in tranquillity, foreign and domestic, over a free, a loyal, and a happy people, is alike the prayer of the Society, and of,

MADAM,

Your faithful and devoted Subject,

BROUGHAM.

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ERRATUM.

Page 74, line 13 from bottom, *for* Michael John Sobieski, *read* Michael Prince
Wisniowiecki, who was succeeded in 1673 by the heroic John Sobieski.

CHAPTER I.

OF THE NATURE OF ARISTOCRACY IN GENERAL.

Aristocracy defined—Errors on this subject—Roman and Athenian Governments—Germs of Aristocracy may exist and give rise to it—Illustrations from Rome and Athens—Pure Aristocracies rare—Tendency of Aristocratic Government to become mixed.

WHERE the supreme power in any state is in the hands of a portion of the community, and that portion is so constituted that the rest of the people cannot gain admittance, or can only gain admittance with the consent of the select body, the government, as we have seen (Part I., Chap. II.), is an Aristocracy; where the people at large exercise the supreme power it is a Democracy. Nor does it make any difference in these forms of government, that the ruling body exercises its power by delegation to individuals or to smaller bodies. Thus a government would be Aristocratic in which the select body elected a chief to whom a portion, or even the whole, of its power should be intrusted: provided he held his appointment during the pleasure of his electors, or during some definite but short period of time, it would not be a Monarchy. So a government would be Democratic in which the bulk of the people appointed a chief magistrate with full powers, or a council with full powers: provided those powers were only exercised during the pleasure of the electors, or during some definite but short period of time, it would neither be a Monarchy in the one case, nor an Aristocracy in the other. If the people had the selection of the governing body among the privileged class, but were confined to that class in their choice, and could not themselves exercise any power, the government would still be Aristocratic, unless the privileged class were so numerous and contained persons so insignificant as

to be mere instruments in the hands of the electors ; in which case the government would be substantially Democratic, and could not fail speedily to become purely such by the abrogation of all exclusive privileges. The essence of an Aristocracy is the existence of a privileged class which engrosses the supreme power, and has sufficient force to resist the changes that any intermixture of Monarchical or Democratical institutions tend to introduce in favour of monarchy or of democracy respectively.

There have been but few instances of a pure aristocracy or of a pure democracy, and governments have frequently been considered as aristocratic merely because there was lodged a great power in one class, or democratic because the citizens at large had much authority. Nor has it been rare to find reasoners misled by a name, and confounding the distribution of power according to certain rules with its distribution according to classes. Thus nothing can be more inaccurate than to consider the earliest Roman and Athenian governments as aristocracies merely because a considerable portion of the people in each were excluded from power. In the former, after the expulsion of the kings, the powers of government are represented as vested exclusively in the families of rank, the nobles or patricians ; in the latter the class of citizens alone are said to have governed the state ; and in both it is inferred that the body of the people, the inhabitants at large, were excluded from all direct authority. But it must be remembered that the privileged families in Rome were the whole free people of whom the founders of the city consisted, or the descendants of those freemen ; and the commoners or plebeians were either liberated slaves or foreigners who had settled in the state. Consequently the governing body was the community at large, subject to certain exceptions, and could no more be deemed a separate order than Protestants in Ireland, before the abrogation of the penal laws, could be correctly regarded as a separate order and called an aristocracy as contradistinguished from the Catholics, or than British-born subjects at this day can be deemed a separate order from aliens and forming an aristocracy in the government. In fact, during the reign of the first kings and until the time of Ancus Martius there were no commoners or plebeians at all, the people consisting wholly of the patricians, or free and freely descended persons, and their clients, retainers, or dependents ; and though these

dependents had no more political functions than the slaves, they formed like them parts of the patron's or master's family; so that the power shared by the people with the king was substantially vested in the whole body. Thus, too, the whole of the Athenian free people, not being aliens, formed the governing body: foreigners and slaves were disqualified; but their disqualification cannot be regarded as constituting an aristocracy in the free native Athenians. Indeed the observation applies still more strongly to Athens than to Rome; for it is understood that the free Athenian people, in whom the government resided, amounted to upwards of eighty thousand, and the slaves and strangers to between three and four hundred thousand, of whom all but about forty thousand were in slavery. No classification can rank this constitution with aristocracies, that would not make the government of the United States of America an aristocracy in respect of the slave population.

But although it would be a great abuse of language to consider these governments as aristocratic, yet they plainly contained the germs of aristocracy; the elements existed from the beginning which might give birth to aristocratic government, because if the exclusive privileges continued to be vested in the smaller body, and the numbers of the persons excluded came to be greatly increased, it is clear that whatever might have been the original state of the select body, and though it might at first have constituted the whole nation, it would become an hereditary aristocracy when surrounded by a numerous body of disqualified people. This happened at Rome; at Athens it cannot with any correctness be said to have taken place. At Rome the patricians formed a distinct and privileged class, far from numerous, and surrounded by a whole nation: at Athens the governing body continued to be composed of the whole free people not being aliens; and the number of aliens and slaves constituting the rest of the state did not materially increase. But although the Roman aristocracy grew out of the exclusive privileges possessed by the original free citizens and their descendants, it is erroneous to conceive that the government was at any time a pure aristocracy. Before the republic it was an aristocratic monarchy of the elective kind; afterwards at all times before the empire it was an aristocratic republic, in which the two orders of patricians and plebeians, nobles and commoners, had at different periods different

proportions of power and influence, but in which there was at all times a mixture of the democratic with the aristocratic principle. In like manner, although the Athenian government never contained anything like the same admixture of aristocracy, yet there were privileges in practice enjoyed by those whose descent was distinguished. The *Eupatridæ*, or well born, were eligible to offices from which freemen whose ancestors had been slaves or foreigners were excluded for several ages. Therefore, independent of the weight and influence which, even in the purest democracy, are possessed by persons of respectable station and descent, there were distinctions made in their favour, and recognised by the law, or, which is the same thing, in the practice and by the customs of the commonwealth. In so far there must be allowed to have been an aristocratic influence in the constitution. In Venice and in some of the smaller states of modern Italy are found instances of pure aristocracy; in the United States of America we find the only instance of a permanently pure democracy. In the former the whole government was in the hands of a comparatively small privileged class; in the latter the whole people partake equally in the powers of government, and may by law equally exercise all its functions. But these are the only modern instances of the aristocratic and the democratic principle being found pure for any considerable time, as Sparta is the only ancient example of a lasting aristocracy. The tendency of each is to ally itself more or less with the other, or with the monarchical principle, or with both. This tendency leads us to consider the nature of mixed government, and especially of the checks and balances in which it consists. Without forming distinct ideas upon this important subject we cannot advantageously examine the nature, the effects, and the tendencies either of aristocratic or of popular government, and the inquiry is equally essential with a view to its bearing upon the subject of mixed or limited monarchy.

CHAPTER II.

OF BALANCES AND CHECKS.

Dogmatical denial of Checks—This founded on theory alone—Doctrine of Checks misconceived—Doctrine explained—Its foundation—Fallacy of the objectors exposed—Illustration of the doctrine from joint Powers : Mutual veto : Factitious majority—Illustrations from English constitution—Proceedings since 1832—Illustration from balance of Parties in Parliament—Illustration from Dynamics—Checks, proper or imperfect—Example of the proper Checks : Roman Constitution—Example of the imperfect Check : Venetian constitution—Absolute monarchies—English and American Constitutions—Senseless project of Peerage Reform.

WRITERS on the mixed constitution of England had formerly accustomed themselves to describe its component parts as the accurately poised and balanced portions or works of a machine, and to extol its structure as if this system of checks were in practice perfect, working according to the theory not only without any stoppages or derangement, but without any retardation from friction or resistance. This refined and somewhat exaggerated praise gave rise to objectors who impugned the doctrine itself, as well as the extreme to which it had been pushed, and at last came to deny that such checks and balances could ever exist at all. The reasoners to whom we refer, and Mr. Bentham was the chief, held all notion of a balance to be absurd ; they treated it as a ridiculous fancy ; they maintained, with little argument, but much fluency of dogmatical assertion, and, after the manner of dogmatists, with no small portion of contempt for their adversaries, that no such equipoise can ever exist ; they considered it as self-evident that if two powers are found in a constitution with different and adverse interests, one must defeat and overturn the other ; they denied that both could co-exist and act ; they treated the doctrine somewhat as theologians have been wont to treat the Manichean scheme of two principles ; contending that if the two antagonist forces were equal they must destroy each other, and the whole movement of the machine be stopped ; that, if they were unequal, the greater must prevail, and prevent the lesser from at all influencing the direction or the rate of the motion.

It seems not a little strange that this manner of viewing the subject should have been adopted in England, and with reference to the government of England, where so many facts are constantly seen to expose its inaccuracy; and equally singular that those reasoners should complain of the doctrine they were attacking as speculative, and theoretical, and fanciful, when, in truth, their own objections are founded upon theoretical views alone, and are at once removed by examining the actual facts. But their doctrine is not confined to our own constitution; it extends to all other forms of government, and seems to deny the possibility of effectual checks existing in any scheme of polity, consequently the possibility of any mixed government being formed. The necessity is thus obvious of considering more nearly the grounds of the theory.

The main foundation of the objection to the doctrine which rests upon the counteracting influence of different powers in the same constitution will be perceived to be a misconception of that doctrine. When properly conceived and stated, it does not represent the conflicting authorities as accurately balancing one another; it only regards the influence of one power as capable of limiting the exercise of another, and it assumes that none of the powers is in itself absolute, or would even if left to itself be carried to all extremities. Thus it never was supposed that a despotic prince being established in any state, and at the same time an aristocracy of equally unlimited powers, there could be any other result of the conflict than a direct collision and the complete dominion of whichever body prevailed. Place the sultan of Turkey and the aristocracy of Venice together in one system, no one can doubt that either the Vizier or the Council of Ten would gain the upper hand, and either a pure despotism or a pure aristocracy would speedily be established. But the question is what would be the result of a combination between the powers of a sovereign accustomed to regard himself as one authority, perhaps to consider himself as the supreme, but still not as the exclusive depositary of arbitrary power, and a patrician body accustomed to consider themselves as the magistrates in a country acknowledging a monarch. In such a system both parties will be disposed to resist each other, to encroach upon each other, even to risk an open rupture with each other upon certain occasions, by no means on every occasion, and up

to a certain point only even on those special occasions, and by no means to take extreme courses and push matters to an irreparable rupture even on those few and excepted occasions. This brings us immediately to that which is at once the foundation of the doctrine of checks or balances, and the exposition of the fallacy upon which the objectors rest.

The efficacy of the check always consists in the general reluctance of all parties to risk the consequences of driving matters to extremities. To avoid this each will yield a little; and sometimes, where the concession is not fatal, one will give up the point to the other, expecting in its turn to have some point of the like kind yielded at another time. Thus the result will be that neither body will carry everything its own way, but a course will be taken different from what would have been taken had there been only either the one body or the other in the system. As far as the interests of the different bodies are concerned those of both will be better consulted than if only one had existed, and in proportion as the interests of the whole community are identified with those of both the bodies will the community be a gainer by the result of the conflict. But we are not now considering the checks as to their beneficial tendency: we are on the question whether such checks can exist at all; and it is plain that the compromise which the conflict produces shows the real existence and the efficacy of the checks.

Let us then, to take the simplest instance, suppose there are two bodies in a state, the consent of both of which is required before any given measure can be adopted—for example, any law made—and that in this respect the two bodies are exactly of equal authority. A law is propounded and agreed to by one of them to which the other will not consent, or will only consent if it shall be materially altered. The first body refuses to alter it, and the second therefore will not concur in adopting it. For the present the change in the law cannot be effected, and must be deferred. The refusal of the second body may become less unqualified another year; or the alterations now demanded may be such that the first body will agree to them, provided some one or two things more be given up. In the end the measure passes; not such as either body would have desired had it been alone in the legislation, but such as both can agree to.

But suppose now, that one of the two is far more powerful

than the other in fact, though by law both are equal. It is said that the more powerful body will compel the other to yield, and that so the check ceases to be effectual. But how can this compulsion be exercised? Only in one of two ways—either by the weaker body being afraid of resisting the stronger, for fear of its strength being used destructively, or by the stronger actually putting forth that strength; in other words, either by fear of the government being overthrown, or by its actual subversion. This, however, is an extremity to which the stronger body will very rarely resort; in the great majority of instances it will prefer yielding many points to avoid the mischiefs of such a course; and the weaker body, being aware of this, will generally make a stout resistance. The stronger may carry more points in this way than the weaker, because the real power of the two bodies being unequal the constitution inclines towards the one side. Thus, if the more powerful body be popular, the government leans towards democracy; if patrician, it inclines to aristocracy; but the leaning of the legislature being, as it must always be, in the direction of the more powerful body, so far from showing that the combined action of the two bodies produces no effect, only shows that the movement which results is according to the proportion of the two forces whose combined operation causes it, and that the government is carried on according to the nature and principles of its structure.

Let us now, after these explanations, suppose the case of two bodies so wholly unmatched that one could in no way resist the other if they came in conflict; and still it is manifest that their co-existence with opposite interests, and, consequently, inclinations, will produce a very different action in the whole government from what would have taken place had only the more powerful body existed; will effectually cause some things to be done different from what the powerful body alone would have done, and prevent still more things from being done, which the more powerful body, if left to itself, would have done. The reluctance to bring on a collision will always operate, however disproportioned the forces may be. The opposition of even the weakest body must at any rate create delay, and thus give time for reflection. The influence of rational and prudent, as well as of timid men, thus obtains an opportunity of making itself felt. The force of the powerful body becomes divided, and a part is

thrown into the scale of the weaker body. The apprehension of an opposition, and its possible result, a collision, also tends to prevent many things from ever being propounded, and modifies beforehand the measures actually brought forward. Grant that the one body is ever so much an overmatch for the other, unless the disparity be such as to render all attempts at resistance impossible (in which extreme case there cannot be said to exist two bodies), no one can maintain that the check is wholly destroyed, or quite inoperative, who is not prepared to contend, as a practical position, that all men and all bodies will, upon all occasions, without any reluctance or hesitation, do whatever they have the power to do.

And herein lies the whole fallacy of the argument, or rather dogma, which denies the possibility of checks and balances. It is always taken for granted that every one is at all times sure to do whatever he is able to do. Now, if this were at all true, the whole frame of civil society must be destroyed, and all government subverted; or, rather, no society ever could be established, and no government formed. What forms the principal strength of any government, and every constituted authority in any given government? Doubtless the mutual distrust of the subjects is one very great security: the uncertainty in which each man is that others will support him if he resists. But this may be got over, and a common understanding may be come to for a common object. How seldom does actual resistance take place! How many times is it avoided when every inducement to it is presented, and every justification afforded, even in the view of the strictest reason and the purest patriotism! How many oppressions will be borne; how long a time will misrule, daily and hourly felt, be submitted to; how much grievous suffering will be endured in quiet by millions, whose slightest movement could subvert the hateful tyranny, and restore general prosperity and ease! The main cause of this patience is the universal disposition to avoid running risks, and the rooted dislike of pushing things to an extremity. But there is a further and most material circumstance which gives force to the constitutional check; it is legal; it is known and felt to be according to strict law and right; the wrong doer is felt to be he who would encroach and usurp; however superior he may be in might, the right is on the opposite side: and this has a direct tendency at once to in-

vigorate the party resisting, however inferior in natural strength ; and to dishearten and weaken the party encroaching, however superior in actual power.

Consider how in any state joint powers are exercised by subordinate authorities, and this will illustrate also the argument as to the supreme authorities. There are two bodies, or a body and a single functionary, which have a mutual veto on each other's proceedings ; say, to take the simplest case, upon the choice of an office-bearer, the concurrence of both being required to make the election valid. According to the reasoning of those against whom we have been contending, the single functionary can always secure the appointment of his candidate, by refusing every person proposed by the body, until the man of his choice is returned. But this we know does not happen in practice, and cannot happen ; because neither party is disposed to bring matters to a collision by standing on its extreme rights, and both are disposed to have the choice effectually made. Therefore the knowledge that certain persons are sure to be rejected prevents the body from selecting these, and the necessity of appointing some one induces the functionary to accept a person different from the one he would most have preferred. Neither party obtains the result most desired, but a person is chosen against whom neither has any very insuperable objection ; and the probability is that a better choice is made than if either singly had selected.

Similar illustrations of the argument are afforded by those institutions in which more than a majority of voices is required to pronounce a valid decision, as where two-thirds or three-fourths must concur. The temptation given to minorities to hold out and govern the majority is in most cases a sufficient argument against such arrangements ; they are only admissible where a necessity for decision does not exist, as where the object is to prevent some measure from being adopted, or person elected, without a general concurrence, and where the entire interruption of the proceeding is not accounted an evil. But practically the result is by no means such as the theoretical reasoners would expect ; the minority, having the power in its hands, is very often found to yield, and let a compromise take place.

It is true that in these cases of subordinate bodies the law and the supreme government controls both, enables each to exercise

its rights, and prevents the one from encroaching or usurping upon the other. But in the case of co-ordinate bodies exercising the supreme power, the substitute for the control of the law and the government is the reluctance which each feels to bring on a collision. The compromise is effected, the middle course taken, by the superior authorities under the influence of this disposition, as in the cases of subordinate authorities under the control of the law and the influence of a similar reluctance jointly—the dislike, namely, to drive matters to the extremity of calling in the arm of the law, or of suspending the operation which the common interest demands should proceed.

When we come to examine in detail the constitutions of the ancient commonwealths, especially of Athens and Rome, and also those of the modern republics, especially in Italy, we shall find many illustrations of the principles which have just now been adverted to. Even in those constitutions which seemed to confer unlimited power upon one body, if there was any other armed with authority, however feeble it might be in comparison, the whole power was not engrossed by the prevailing body, but a considerable share of influence was possessed also by the other, and the motion of the whole machine of government partook of both the impulses in the different directions.

But a more striking exemplification of the same doctrine is to be found in the practical working of a constitution with which we are much more familiar—that of our own country. It cannot be doubted that ever since the late reform in the representation the measures of the legislature have been affected by the inclinations and opinions of the Lords as well as of the Commons. In the second Parliament after the reform there were very material changes effected by the Lords in the proposed constitution of the municipal corporations, and measures affecting the church partook largely of the same influence, both as regarded tithes and church-rates. The majority in favour of further changes had no doubt been greatly diminished by the general election of 1834-5; but even in the first parliament after the reform, when the majority in favour of further change was about three to one, and when the members of the lower were marshalled against those of the upper house in the same proportion, there were some measures of importance thrown out in the Lords for which the anxiety of the Commons was matter of certainty, as

the Local Courts' Bill, lost too by the narrow majority of two votes, and other measures, as those relating to the Irish Church, which the Lords suffered very unwillingly to pass, and which were on the other hand materially altered in the Commons, with the manifest design of disarming opposition in the Lords.

The share taken in legislation by each of the great parties which generally divide both Houses of Parliament as well as the nation at large, affords another illustration of the same principles. Between these parties there is little or nothing in common: whatever may be said of the Houses of Parliament being divided each in itself, so that the Lords have a large influence in the Commons, and the Commons some supporters in the Lords, it cannot be said that the opposition have any supporters in the ranks of the Government party, and the Government party has always a decided preponderance in every question. And yet who can doubt that the measures of the Parliament are, at all times, considerably influenced by the opposition? The reasoners, or rather dogmatists, who hold so cheap the idea of checks and balances, must needs suppose that when the ministers have a majority which enables them to carry any question they please, and successfully to resist whatever their adversaries attempt, the whole course of legislation will take one direction, and the power of the opposition be no more felt than if no such body existed. The reverse is always found to be the case; not a session passes, even under the rule of the most powerful administration, without important changes being effected in their plans by the efforts of their greatly outnumbered adversaries; to say nothing of the many things in almost each measure which are altered in the plan before it is brought forward, altered to disarm the opposition, or to smooth the passage of the bill.

In all these instances, whether of contending parties or conflicting authorities in the State, the different forces combine to produce the result, the movement of the political machine. Its course is in the direction neither of the one force nor of the other, but in a direction between those which either would separately have made it take. As a body on which two forces operate at the same time, in different, but not in opposite directions, moves in the diagonal between the two directions; so does the legislature or the government of a country take the middle course between the two which the different authorities or in-

fluences would make it take if left to themselves. It will depend upon the proportion of the forces to each other, whether the direction taken shall incline more to the one or to the other; but this affects not the argument; the course is affected by each, and the influence of each prevails so far as to check that of the other.

In all that has been said on balances and checks, we have assumed that the counteraction was of one kind; but there are, properly speaking, two descriptions of check, differing in kind as regards their structure and constitution, differing only in degree as regards their operation. The several authorities which are each armed with power or influence may belong to, be selected by, or be otherwise under the control of the same class, and have generally the same interests; or they may belong to, be selected by, or be otherwise under the control of different classes, and have essentially different interests. The former may be termed *imperfect checks*, the latter *perfect*, or *proper checks*. The counteracting influence exercised by the former will always be comparatively trifling, and sometimes will be hardly perceptible at all. Nevertheless some effect may in most cases be practically ascribed to it. For the most part it is rather to be regarded as the manner in which the power of the class is exercised—as its mode of operation—than as a real check. Yet in practice such divisions of the supreme authority, even though all the subordinate parts are under the same control, is found to have some tendency towards moderating its force, and a very great tendency to prevent mischief. This will immediately appear if we consider how these two kinds of checks act.

Let us again take the simpler case of two powers. In the Roman Republic there were two co-ordinate bodies, the Comitia by Tribes, and the Comitia by Centuries. Their powers were equal, and they were composed of classes whose interests were widely different, numbers alone being regarded in the one, and property alone in the other. This is the most remarkable check, properly so called, of which we have any example, and we shall afterwards find that political inquirers much more practically sagacious than Mr. Bentham's followers, have found it exceedingly difficult to account for the system working at all in which such an arrangement existed. Probably but for other contrivances, and certainly but for the gradual formation of its parts, such a con-

stitution could not have stood. The government of Venice affords another and a very opposite example, a remarkable instance of the imperfect check. It contained several bodies armed with high authority, some of them with the highest; but all were formed out of the general or greater council, and that council was composed of the nobles alone. Thus the *Pregadi*, or senate, which was the executive or administrative council, may be said to have had supreme powers, though the Council of Ten, which also had the same supremacy, was more efficient, from being less numerous and more uniformly constituted, consisting only of fourteen persons, and these the most important in the state. But both those bodies were composed of the nobles, and were chosen by, selected from, acting under, and accountable to the general or greater council, the whole body of the nobles. Here, therefore, the aristocracy was everywhere predominant; and the division or delegation of its powers was only for the purpose of exercising them the more conveniently, and indeed the more effectually. In one point of view, then, this division rather tended to increase the aristocratic power, and nothing like a counteraction can be perceived. Again, when an absolute sovereign, as we have seen (Chap. V., Part I.), delegates his powers to a minister or council, he only acts by those agents, and the superior power is still in one hand. Nevertheless some small mitigation even of despotic power is produced by the subdivision. The petty chief of a tribe, so small that it can be governed by a single will, is probably more despotic and exercises his power more absolutely than the head of any regular and extensive monarchy; and the sultan and czar in their palaces are more despotic than in the rest of their dominions. So the mere existence of several councils at Venice must have tended to prevent some acts of violence which might have been done by a single body, numerous enough to prevent individual responsibility, and not too numerous to be efficient. This, however, is quite clear; the existence of several bodies has a tendency to interpose delays and prevent rash councils and precipitate action. The safety of the system is thus better secured; and so far the subdivision of authority has anything rather than the effect of checking its exercise. Yet as all violent measures are apt to be precipitate, and as delay and reflection must ever be favourable to both justice and mercy, the tendency

upon the whole of the subdivision will be found towards mitigating the exercise of arbitrary power. The great inferiority in fact of the efficiency of such checks, to the operation of those which are provided by the vesting of power in bodies differently constituted and having conflicting interests, is manifest.

This difference may be further illustrated by referring to the constitution of England and the United States, in both of which the checks of the three members of the Legislature hold a middle place between the extreme cases of Rome and Venice, beside the further difference of there being an effective government in both England and America, so as to form a third component part of the constitution. The body which the American Senate represents is intimately connected with the body which chooses the House of Assembly, although the qualification of the electors being different, property may be said to be more immediately represented in the former, and numbers in the latter. In so far as the two bodies have different interests, and are chosen for different terms, the check belongs to the perfect class; in so far as the influence of property among the electors of the representative assembly operates upon their choice, the check becomes of the imperfect kind. So in England the connexion between the Peers and the electors of the Commons, even since the late Reform, makes the check more imperfect than by the strict theory of the constitution it is supposed to be, and more imperfect than it would be if the Lords and the electors were bodies entirely separated. But in so far as the Lords differ from the nation at large in their interests, and in so far as they hold their places for life and by inheritance, the check is of the proper or perfect kind.

Consider now what the effect would be of a plan which has frequently of late years been broached, and of which many persons were very recently much enamoured. The speculation was to deprive the House of Lords of its legislative functions, and to vest the whole power in an executive and a House of Commons. But the manifest absurdity of expecting any safe and cautious legislation from a single chamber made it necessary to devise a second for the purpose, it was said, of reconsidering the bills and correcting the errors into which the first chamber might fall. No doubt, the whole experience of parliament demonstrated clearly enough how great this necessity was, and men at once saw into what frightful difficulties the country must be

thrown if only one body had to discuss and decide upon all measures. But then nothing could be more ineffectual, even for revision, than the plan proposed. The second House would have differed very little from the first; even if a higher qualification had been required, it would have been chosen for a small number of years only, because, had it been elected for life or for many years, it would have been liable to the very same objections which had caused the House of Lords to be dispensed with. Therefore, not only would it have been no effectual check; that was not the object; but it would have given no effectual security for revision, which was the object proposed. It would have been a little, and but a little, better than adding so many stages to those through which bills must pass in the Commons as now constituted; a little, and but a little additional security for reflection and revision would have been afforded. But the great security would have been wholly wanting, which results, and can only result, from the nature, structure, origin, and interests of the two bodies being entirely different, and which depends upon the full discussion only to be obtained from such really conflicting bodies. It deserves to be noted, that all these senseless projects have long since been abandoned by their thoughtless authors, who a few years ago considered the safety of the empire to depend upon what they termed "Peerage Reform."

CHAPTER III.

PROGRESS AND CHANGES OF ARISTOCRACY—OLIGARCHY.

Tendency of Aristocratic and Democratic Constitutions to mix with others—Difference in this respect of Despotism—Tendency greatest in Aristocracies—Early pupillage of the People—Their progress to emancipation—Best course for the Aristocracy—Illustration from colonial emancipation—Natural introduction of Oligarchy—Its natural progress to greater exclusiveness—Its natural tendency to dissolution—Examples from the Venetian, Genoese, Siennese, and Lucca Governments.

WE have in the outset of this discussion remarked, that aristocratic and democratic constitutions have a much greater tendency to mix themselves with one another, and even with monarchical institutions, than either despotic or constitutional monarchies have to ally themselves with those of a popular nature. This arises from the different nature of those several governments. When a despotism is established, all influence, all movement ceases, except that which proceeds from the sovereign; all power, the whole force of the state, centres of necessity in him. The least division of this force, the existence of any opposite will, unconnected with and independent of the monarch, would be destructive of the system. Consequently, the germs do not exist, out of which any popular institutions might grow; there are no elements of gradual change; a single step towards it, however small, would be equivalent to revolt, and being treated as such, would terminate the effort at once. Change can only arise from some unbecarable opposition, or some intrigue in the family or among the connexions of the Prince: this to succeed must be ripened into action, and whatever may have been its origin, it has never any but one result, a change in the person or the family of the despot. The alliance of the monarchical with the aristocratic principle in the constitutional monarchies of Europe is no exception to this rule; for these monarchies arose out of the feudal aristocracy as we have seen, and are only an illustration of the tendency which the aristocratic principle has to ally

itself with other institutions. But the existence of aristocracy in constitutional monarchies produces a tendency to further admixture, which cannot exist in governments purely despotic; and in proportion as these monarchies have more of the aristocratic or of the democratic institutions connected with them, will always be their tendency to further limitation or to progressive improvement.

It is, however, in constitutions entirely popular, in those of which the main structure is either aristocratic or democratic or mixed monarchy, that the tendency to an alliance with other principles than those of the constitution is most remarkable, and much more in aristocracies than in republics. The reason is plain: the institutions which exist are of a nature to allow discussion and consideration among either the whole or a considerable proportion of the people. The desire of change has a free scope, even where it is founded upon no rational grounds, but much more where the circumstances of the government indicate its expediency or necessity. Thus, reforms tending towards a democracy may become a favourite object in a mixed monarchy, from the progress of the people in wealth, in power, and in improvement; or the evils of democratic ascendancy may suggest the return to a more purely monarchical polity. So in a democracy, the necessity of repressing tumults and securing the foreign as well as domestic peace of the state may lead to enlarging the aristocratic influence, or still more probably to substituting a monarchical for a republican regimen. Both of these courses were taken in succession by almost all the Commonwealths upon the mainland of northern Italy. The aristocratic form, however, is still more liable to form such admixtures than the democratic; and accordingly, except the Spartan Government in ancient times, and the Venetian in modern, there is no instance to be found of an aristocracy which did not, sooner or later, become either a democracy, as that of ancient Rome, or a petty monarchy, like those of the Italian States. The reason of aristocracies being thus naturally shortlived is obvious; and it applies still more strongly to oligarchies, or the government in which, by an abuse of the system, there has been found a kind of aristocracy within an aristocracy, a few of the privileged class usurping the whole power to the exclusion of their fellows, just as these had at first usurped the supreme power to the exclusion of the people.

The period in a nation's progress at which the aristocratic power is naturally established, must always be while the body of the people are in a low state of refinement. Their power was in proportion feeble, and the upper classes, possessed of almost all the property, and beyond comparison better informed, as well as more skilful in all their arrangements, found it easy to retain in their hands the entire direction of public affairs. In fact, the bulk of the people being extremely ignorant of everything relating to the administration of the state, never thought of interfering, and only felt an interest in matters which immediately concerned themselves as individuals. Hence any disputes that arose between them and the superior or governing class related entirely to subjects of immediate and urgent individual interest, as the oppressions exercised at Rome by the patricians over their plebeian debtors, and their monopoly of the public lands without paying rent, or the feudal oppressions in modern Europe by taxation and the exaction of personal service. With the general management of public affairs it never occurred to the people that they had any concern; and their profound ignorance of everything which related to government kept them wholly aloof from all controversies respecting it, save only that in the Italian Commonwealths the people frequently required to have a voice in the choice of the chief magistrate. In all other respects, even in those republics, they never interfered as a body, and for their own rights or interests as opposed to those of the patricians. They were appealed to by the contending factions, and took a part with the one or the other; but in almost constant indifference with respect to the subject matter of their contentions, and generally ignorant of the merits of the question, only taking part with individual leaders or leading families, and knowing little more of the opposite sides of the dispute than the names by which their adherents passed.

But though such is necessarily the state of things in early ages, and the power which the people must necessarily always possess from their numbers is thus divided, and, as it were, dormant, from their ignorance and neglect, the progress of society by degrees increases their influence with their experience and information. In some cases, as at Rome, where the patricians originally bore a large proportion to the whole body of the people, the mere increase in the numbers of the plebeians brings

with it an augmentation of their relative force ; but in every case their wealth goes on increasing, and augments their influence. It thus happens, that as the weight of the people increases with the progress of society in knowledge and in wealth, they are necessarily prepared for passing from the state of pupillage in which they must always be in earlier times ; and once prepared for their emancipation, it must, sooner or later, come with more or with less of violence if suddenly, safely and peaceably if gradually effected. The true wisdom of the aristocracy in all such cases is to foresee this necessary result, and to prepare for it betimes, as the true wisdom of the mother country always is to foresee the inevitable emancipation of her colonies, and to part from them in such a good and kindly spirit as will make them her natural friends when independent. The course which the aristocracy, like the mother country, invariably takes is to resist the change by every means in their power. But they are always obliged to yield somewhat ; and the apprehension that each concession may give the people more power to demand further changes is the reason why they always resist the change, and often refuse to grant things in themselves of no importance to them, though beneficial to the people. The struggle being once begun, and the power of the people fully put forth, the aristocracy has never failed to take one course after finding that an admixture of democratic institutions only brought their own power nearer its close ; they have called in another auxiliary, and given both themselves and the plebeian party a master. The Romans were enslaved, as we shall find when their constitution comes to be examined in detail, by the aristocratic parties between whom the corrupted plebeians might have held the balance till they overthrew the whole and re-established the republic ; but instead of that, they became the instruments by which conflicting factions tore the country to pieces, and all finally submitted to a race of tyrants. In all the republics of modern Italy, with the exception of Venice, the aristocracy which usurped the government were gradually obliged to restrict their own powers, but soon put an end to all conflict with the people by placing sovereign princes of their own order at the head of affairs, and changing the aristocracy into constitutional monarchy.

The introduction of oligarchial power and its short duration

are natural and almost necessary attendants upon the aristocratic constitution. At first when the aristocratic body is not numerous, and all, or nearly all, its members are really endowed with the advantages of fortune, that is with wealth as well as with birth and rank, the supreme power is shared by them all; and the struggle of parties is chiefly confined to maintaining an influence of a personal nature in directing public affairs. But this struggle soon leads to the design of exclusively possessing this great influence; and one party generally endeavours to introduce such a monopoly, even against its equals in birth and wealth. The most ordinary course, however, is that a certain class of the whole body, without reference to party divisions, becomes distinguished from the great body of the patricians by its superior wealth and personal influence. This is sure to happen when the body of the nobles becomes numerous, and consequently contains many poor individuals. The rights of nobility being enjoyed by all the children of each house, the fortune will not bear so great a subdivision as would suffice to give each a reasonable portion; and hence, independent of accidental misfortunes or personal extravagance reducing families to poverty, the inevitable tendency of every patrician body must be, as its numbers increase, to become composed of two classes, a wealthy and a poor. The consequence is almost as inevitable that an attempt will be made by the leading families, or a portion of the leading families, to exclude all the rest, and to retain in their hands the exclusive authority of the government. This object is effected in two ways; sometimes the law is made which vests power in a small body, or comparatively small body, of the patricians, and this may be termed the *strict* or *legal oligarchy*. But even where this arrangement is not made, the influence of wealth gives a sway to the leading families, and the others are practically excluded from the government, though not by law; they are legally capable of exercising all the functions of government, but do not in fact share in them; and this may be termed the *natural oligarchy*.

Of the stricter oligarchy, the pure oligarchial constitution permanently established, there have not been many examples, partly because the resistance of the whole body of this privileged order tended to prevent its establishment; partly because, when once established, the same cause has generally subverted such

governments very soon after their formation. It is the natural tendency of the aristocratic form generally to mix itself with either the democratic or monarchical,—with the former from the progress of popular influence,—with the latter from the attempts of the aristocracy to obstruct the growth of that influence, or of each party to strengthen itself against the other. But the tendency of an oligarchy is almost inevitably to its destruction, and the restoration of the whole patrician body's power. It is the still more inevitable, indeed the necessary, tendency of an oligarchy, as long as it exists unchanged by law, to become more and more close, confined to fewer hands, and thus rendered more odious and oppressive to the rest of the community. For the select class, if the power is hereditary, becomes less numerous by the natural extinction of families, and if formed by perpetual self-election it becomes gradually more narrow in consequence of the disposition in each set at all times to confine it, and exclude as much as possible the successors who on each vacancy would keep up the number. Thus at Bologna, the senate had the power of creating new nobles, but hardly ever exercised it except in favour of needy and therefore dependent persons. Thus, too, at Venice, from the year 1297, there was a pure oligarchy formed; a certain number of families usurped the whole power of the government, and excluded all the rest. In the course of a few years, however, those who were excluded obtained the repeal of this ordinance, probably because they were taking steps to obtain the support of the other orders, which would have subverted the aristocracy entirely, and therefore the oligarchs preferred anything to that catastrophe. In 1319 the whole nobles were again admitted, but the government was confined to them.—Genoa had an oligarchial government for some years, at the end of which the distinction was abolished.—Sienna was under a pure oligarchy from 1290 to 1354; and the government of Lucca became oligarchial in 1554 by the Martinian Law, which confined all power to a certain class of families. This oligarchy lasted longer than any of which we have the history. It continued undisturbed till 1799; and the number of families eligible to office had been reduced so low by extinction that there were not enough to fill the public offices.

CHAPTER IV.

FOUNDATION OF ARISTOCRACY IN THE NATURE OF THINGS.—
NATURAL ARISTOCRACY.

Equality impossible—Attempts made to ensure it—Influence of independent circumstances—Of wealth—Reflex operation—Upstart superiority—Foundation of respect for hereditary distinctions—Reflex feeling—Hereditary superiority improves men—Effects of improvement—Respect for rank—Natural—Essential to artificial Aristocracy—Illustrations from Rome, Sparta, Feudal Government, Modern Italy—Effect of Natural Aristocracy in destroying Oligarchy—Political profession impossible—It must necessarily be a corrupt trade—Athenian State orators—Advantages and disadvantages of a Political profession.

IN order rightly to understand both the real foundations of aristocratic government, and the limits which the nature of things has affixed to its force and its duration, it is necessary that we examine the nature and the foundation of what may be termed the *Natural Aristocracy*. We have already made some observations upon it, as far as was necessary for discussing the principles and explaining the structure of constitutional monarchy; but we must now enter more fully into this very important subject.

The notion of equality, or anything approaching to equality, among the different members of any community, is altogether wild and fantastic. All the attempts that have ever been made to secure it have been of necessity confined to merely prohibiting positive distinctions of rank and privilege, which can always be effected, and to preventing the unequal distribution of wealth, which never can be accomplished, though laws may be devised for rendering this more slow, to the great injury of the public interests, and restraining of individual liberty. But the diversities in human character and genius, the natural propensities of the human mind, the different actions performed by men, or which have been performed by their ancestors, lay the foundations of a natural aristocracy far deeper and far more wide than any legislative provisions have ever even attempted to reach—because no such provisions can possibly obliterate the

distinctions thus created by the essential nature of man. In examining these distinctions we shall also regard the distinctions of wealth; because laws never can wholly prevent its unequal distribution, although they may interpose obstacles to it.

1. The actual possession of any superiority, whether in wealth or in personal qualities, imposes a certain respect, begets a certain deference in the community at large of inferior men. Independence, if not influence and command, are possessed by the favoured few. The mere circumstance of their small number is something; their having, without dispute, what all would wish to have, is more. A man of this class never pays court to you: he may be civil, and you thank him for it; he never has any occasion to be your suitor. Now nothing more tends to lessen respect for any one than his courting you, by which he seems to acknowledge you his superior. Even talents are less powerful in this respect than wealth, because they are less secure to their possessor, and their extent is less a matter of certain, undisputed estimate. All this, too, is wholly independent of the positive and certain influence which superiority, whether of riches or endowments, bestows,—the power of commanding other men's services, assisting them in their necessities, contributing to their comfort or advancement. Nay, so great is the tendency to recognise this influence, that you shall constantly see a person of great affluence exercise an extraordinary power over others, from the fact of feeling that they may one day be indebted to him for favours, though in reality no such thing is in any degree probable. Persons of known wealth could be named in our own day, and in this country so boastful of its independent spirit, who never were known to assist any literary man, and probably never would had they lived for a century, and of whom all connected with the press stood in a kind of awe approaching to reverence, merely because they could, if they would, befriend the caste of authors.

A reflex feeling greatly increases this habitual deference for personal or patrimonial superiority. He who is possessed of it is known to be looked up to by all, or almost all others. This we cannot deny, and we cannot prevent. Be our own views ever so enlightened, our disposition ever so independent, our contempt of wealth ever so philosophical, we are aware that the party is an object of observance with the bulk of mankind, and

this makes us view him as something different from what we really know him to be.

2. The length of time during which any one has possessed the attributes that command respect forms a very material ingredient in modifying or assessing the amount of that respect. This amount bears always some definite proportion to the length of possession; and that, not only because of the greater security which long possession implies, but because there is an invincible disposition in men to consider with less respect not only those who are now on the same level with themselves, but those who only recently were lifted above that level. Indeed the superiority lately attained is counteracted by the impatience with which men regard the elevation of those whom they have known as their equals. "But t'other day he was no better than ourselves" is a saying in all mouths on such occasions, and comes from a sentiment that nature implants in all bosoms. This even applies to men suddenly and late in life raised by the unexpected acquisition of learning. The unexpected development of genius has no such counteragent to the admiration which it naturally excites. The author of the 'Botanic Garden' * or the Waverley Novels, the inventors of printing or the spinning-jenny, the discoverer of America, were ungrudgingly hailed as great benefactors of their race, large contributors to the pleasures or the profits of the world. The individual, in such instances as these, is regarded as having all along possessed the same happy genius which late in life burst forth with such resplendent lustre. But an ignorant mechanic or peasant, who has late in life become possessed of great learning, never fails to meet from the bulk of mankind with somewhat of the slight and envy that haunt the path of upstart wealth. "But yesterday he knew no more than we did" is sometimes said as well as "But yesterday he was no richer than ourselves."

3. It is only carrying the same feeling a step further to respect the distinctions which are handed down from ancestors more than those which are acquired by their present possessor. Not only is the time of enjoyment, generally speaking, longer, but no one can ever recollect the party unendowed with the

* Never was there a greater sacrifice of fair dealing and sound taste to party spite than in the running down of this poem by Mr. Canning and his associates. With all its defects, and they are the defects of the didactic style and not of the poet, there are in this splendid poem passages of almost unequalled magnificence, and the feelings which pervade it are always enlightened and humane.

superiority—no one can remember him naked of the marks of distinction. He never was on the same level with ourselves. Accordingly the impatience of superiority is in this case apt to go back, and find that at least his father or his grandfather was "No better than ourselves." Thus all novelty has the levelling tendency; it tends to remove the distinction on which the diversity is built; it is one fewer mark, one difference more taken away—and the whole question is one of differences and distinctions. This is really the foundation of respect for hereditary honours. "New nobility," Lord Bacon says, "is but the act of power; ancient nobility is the act of time."* Even virtue and genius, and mental acquirements, are in some sort affected by this law of our nature. A man is himself no better for his ancestor having been virtuous, more able, more learned than others, or for being sprung from a race which had rendered precious services to their country. A man is no worse for his forefathers having been of a grovelling nature, or infamous life. Yet where is the individual who can place himself above the pride of descending from Marlborough or Blake, Newton or Watt? And where is the sage whose wisdom is so captious or heart so callous as to refuse the epithet of honest or natural to such pride as this?

The reflex feeling here again comes into action. As it is a fact, perhaps an ultimate fact incapable of being resolved into any more general, that almost all men feel this respect, place this value upon hereditary distinctions, ancestral honours come to be prized, even by those who would not otherwise esteem them. We thus respect him who possesses such honours, because we know that he is the object of deference and respect to almost all men, and is thus distinguished from ourselves; nay, we love to associate with him, on account of other men running after him, and on account of his acquaintance being of necessity narrowly limited, as well as highly prized.

4. The hereditary possession of superiority in wealth and station has a certain effect upon the character and habits of the individual, and therefore an intrinsic as well as external and accidental value in exalting the possessor. He never can have been the associate of the low and the worthless; he has never known any servile employment or unworthy courses; he has

* *Essays*, xiv.

never been tarnished with meanness or depressed by dependence ; never suffered under insult or oppression ; never had his feelings outraged or his taste offended and perverted by squalid or sordid contacts. His feelings may be supposed more delicate, his spirit more lofty, his principles more pure, than those who have struggled with hard fortunes, and in whom the school of adversity has compensated for the vigour which its discipline imparts, by the coarseness and callousness which its rod is apt to imprint.

It is upon the influence and authority which the circumstances just now considered bestow upon the superior members of every community, that their power in every state naturally is built. They have the greatest weight and confer the most power in less enlightened ages ; the progress of knowledge and the general improvement of the people never fail to lessen their influence, with the exception of the last-mentioned circumstance, which is most prized in a highly refined state of society, and with the further exception of the respect due to virtue and capacity. But no progress in improvement and no power obtained by the mass of any community can ever destroy the influence of the natural aristocracy, efface the distinctions which we have been describing, or level the ranks or natural orders to which those distinctions give rise. Indeed the beneficial effects produced by such gradations, in maintaining the peace and good order of society, are not diminished by the progress of improvement, because as much is gained of additional respect for the natural aristocracy by reflection and the perception of the expediency of giving it due weight, as may be lost in the more vulgar deference to wealth and birth.

The artificial aristocracy must always, to a certain degree, be connected with and founded upon the natural. No force of positive institutions could ever maintain the power of a body of nobles who had no wealth, or talents, or services to distinguish them from the rest of the community. All nobility therefore has, in all ages and countries, been originally founded upon natural aristocracy ; and there never has been any instance of a nobility preserving its power, or even its place in society, without retaining also a large share of the natural advantages in which its superiority originated. The Patrician order at Rome was composed of the original freemen who founded the State, and their descendants born in the republic, and not aliens. But they also

possessed by far the greater share of the land, the principal wealth of the community.—The Spartan aristocracy had a similar origin and endowment, as we shall afterwards see.—When the chiefs who overran the Roman empire established themselves in their new conquests, we have seen that they formed a privileged body of their principal companions in arms, who were the most daring or most skilful leaders in their armies, and whom they endowed with ample landed possessions. The foundation of the feudal aristocracy was the possession at first of the whole landed property, ever afterwards of by far the largest portion of it. When in the course of time other classes of the community obtained landed rights, the nobles still retained exclusive rights of a peculiar description in the soil; and even when all such distinction was removed, and every one could hold his land by the noble tenures, though himself not noble, there was still the greatest share of landed wealth vested in the patricians. When commerce introduced a rival class of possessors, the influence of the natural aristocracy gained for the hereditary nobles the respect, and from thence the influence, which we have seen flows inevitably towards those whose wealth is hereditary.—In the Italian republics commercial wealth early rivalled feudal; and a civic aristocracy was formed of the classes who had long enjoyed this distinction, and the other superiorities constituted by capacity, public services, and long habits of command. The families thus distinguished were the aristocracy of these commonwealths, and their influence was established exactly as we have seen the natural respect for station, riches, and merits always operate. The civic nobility thus formed soon engrossed exclusive privileges, and became, by artificial means, the governing body of the state. In all these communities attempts were made to exclude the bulk of the people, even the bulk of the wealthier classes, and in all, the nobles for some time succeeded in confining the political power to their own order, although their origin was exactly their filling the same station which the richer and more eminent families of the people now occupied. The descendants of the noble families becoming numerous, more of them became of course both stripped of wealth and deprived of all the other attributes of natural aristocracy. But a sufficient number of the order continued so endowed as to preserve their natural influence, and to have a real weight in the community, independent of

the privileges vested in them by the laws and customs of the state.

But it is to be observed that the constant tendency of the natural aristocracy is twofold. It both restrains the power of the whole patrician body, where a proper or artificial aristocracy is established, and where no privilege is possessed by one branch of the nobles over the rest; and it prevents the long exclusion of the bulk of the noble order—in other words, it brings the existence of an oligarchy to a close, as we have seen happened in Venice and Genoa, the cases being but rare and inconsiderable, as at Sienna and Lucca, in which the oligarchy was of long continuance.

Thus there would, in all communities, necessarily rise to influence a natural aristocracy, whether the laws and the forms of the constitution established a privileged order or not. This natural aristocracy would obtain a considerable share of real power, although there should be no order of men legally privileged, and would affect the distribution of influence among the members of a privileged order, where the law recognised such a body, and invested its whole number with equal direct power. This necessity grows out of the impossibility that there should ever exist to any extent, and for any length of time, a political profession. This impossibility appears manifest from several considerations.

1. If there is party spirit or party conduct in any given state, then clearly men can only drive the trade of politics by being corrupt or factious, or both, because, instead of only qualifying themselves to gain their livelihood by merit, they must also either quit their party or force it into power. Suppose a lawyer could only obtain practice by truckling to the bench, or by courting attorneys, he would be less corrupt than the trading political adventurer, the man who engaged in politics as a speculation of gain, because the lawyer could not advance his own interest by betraying his client's; whereas the trafficking politician must betray his client, the country, in order to live, and at the very least must set its interest at naught. He *may* do his duty, because occasionally his interest may coincide with his principles or opinions; but this does not necessarily happen, and in order to live he must regard only that which works for his party and himself.

2. Suppose party to be unknown in the given state, still cor-

ruption is inevitable, because whoever has the dispensation of patronage must be gained; and hence counsels, pleasing rather than wholesome or useful, must be given. The political trader, like the player, who lives to please, must please to live. But unhappily there must also be in his composition a little of the prostitute as well as of the more honest player.

3. But it is needless canvassing what must happen in a state devoid of party connexions. Such connexions always must exist to the extent of our present argument, for the government of every country must be conducted on one set of principles or another. But the existence of the political profession converts this state of things into the ordinary, vulgar, and worst species of party.

4. If it be said, "You can pay the political man," the ground is furnished for considering who is to select the person that shall be paid. Every man who pleases cannot be allowed to become the stipendiary servant of the public. Some selection there must needs be. Then this only adds one new class of functionaries to those already employed by the state; and some one must appoint them, like the rest.

5. At Athens there were ten state orators, and hardly any one else ever took part in the debates of either the Assembly or the Senate. But all persons must undergo a severe scrutiny before they were even allowed to speak at all. The concealment of any offence or other disqualification on this inquiry was severely punishable; and not only pure Attic descent, but the possession of property in Attica, was a necessary qualification for being appointed a public orator. There is great doubt on the question whether they received any salary or not. It certainly never could have exceeded a very small sum, because we know that the judges (or rather jurors) had only a groat of our money each sitting; there were 6000 persons qualified to act as jurors, and the choice being by lot, each could only be selected to sit on trials 100 times in a year, and gain about thirty shillings, which small sum the pay of a state orator could not much exceed. If our members of parliament were paid, as some unreflecting persons recommend, from a foolish idea that it would remove one of the obstacles to the lower classes sitting in the legislature, the only result would be a great increase of corruption at elections, and a complete subserviency of the representative to the will and

caprice of his constituents—a subservicency utterly destructive of the deliberative functions so essential to the representative system.

All these reasons, which show the profligacy that must arise out of the existence of a political trade or profession, are decisive against its possibility, because no institution can endure in a popular government, whether aristocratic, democratic, or mixed, which inevitably leads to corruption and to violation of public duty. Hence it follows as a necessary consequence, that the administration of public affairs must ultimately, nay, in a very short time, become substantially vested in the natural aristocracy of any country—the classes qualified by property, by respectability of character, by capacity and acquirements, by experience and services, to take the lead among their fellow-citizens. Where there is no order privileged by law, this class will form such an order in practice and in fact. Where there is a privileged order, in whom, either exclusively or rateably with others, power resides by law, when this order becomes numerous the portion of it distinguished from the rest by the natural aristocracy will obtain the lead.

We have here only been considering the subject of a political profession in its connexion with the question of natural aristocracy. It may be proper to add a few words relative to the opinion of those who regard such a profession as wanted in the management of state affairs. These reasoners are led away by the notion that the principle of the division of labour is applicable to the work of government, and they contend that men must devote themselves exclusively to political science, in order to qualify themselves for conducting the public councils. It is exceedingly common to hear the argument put thus: any common handicraft can be learned only by serving an apprenticeship to it; then how can men suddenly learn the difficult art of government? One great fallacy in this argument is, that no person ever contended for the intrusting of government to ignorant or inexperienced hands; that no person ever even contended for having the government of a country administered by men all of whom had other serious occupations to which they were devoted; and that the only question really is whether or not the political caste shall be composed of men whose circumstances are independent; whether it shall consist of men who

seek their livelihood by it as a profession, or of men who, well able to subsist without it, pursue it from motives of ambition or public spirit, vanity or love of patronage, and possibly with the view of adding to a fortune already independent.

It must be admitted on the one hand that if only men in easy circumstances, and having no professional pursuits, engage in politics, there will be excluded from the public service many persons of great talents and integrity, whose fortunes are small. But on the other hand, the liberal professions themselves can only be pursued by persons of certain means, because no man can, for some years, gain his bread by them; and yet no one ever complained that this excluded the public from the benefit of able lawyers, physicians, or divines, among men who might be born in the humbler walks of life. And the difficulty, or rather the impossibility, is just as great of so arranging a political trade as to enable all who are qualified for it by their talents and virtues to enter into it. Then we must not lose sight of the great mischiefs arising from having a large class of men whose subsistence depends upon their success as political adventurers; for this really means that they must seek after place at all hazards. We have already shown to what evil consequences this kind of contest must inevitably lead.

The greatest oversight, however, of those who argue for a political profession consists in this: they do not consider that in every ordinary profession the confidence of the customer, or employer, is given the more freely and the more entirely if he knows that the professional man follows no other vocation. The more he is known to depend on his calling, the more he is trusted. But in the political calling it is just the reverse; no man is so little valued, none so little trusted, as he who is known to have no other means of subsistence. Who will ever acknowledge that his livelihood depends upon his success in parliament? Who in the law, or the church, or in trade, ever hesitated to profess that his whole reliance, and that of his family, was upon his professional gains? The public may be apt to overrate the independence of wealthy men, because they who have no need of money are exposed to feel the force of other temptations. But to a certain extent and to a great extent it is quite true, that needy men are apt to be dependent, even if we charitably refuse our faith to the saying, that "an empty bag will not stand upright."

It is not to be doubted that sufficient political knowledge may be acquired, and habits of public business may be formed, by men busily engaged in other professions. Mercantile men have often distinguished themselves in the senate, sometimes in the councils of their country. Lawyers have always borne a forward part both in council and in debate. Soldiers have often displayed great statesmanlike qualities. Perhaps the greatest captains have always been among the greatest statesmen in every age and in all countries. It is an error as gross as it is general to compare the training required for learning a common handicraft to that which is necessary for fitting men to govern their fellow-creatures. No reading, no reflection, no observation, will teach manual dexterity.

We may on the whole conclude that the evils greatly counterbalance any advantage which can reasonably be expected to result from the existence of a political profession, which men never should follow for earning their subsistence.

The most important practical considerations flow from attentively examining the nature and tendency of the Natural Aristocracy. Of these it may suffice that we mention two: the security afforded in every popular government, whether aristocratic, democratic, or mixed monarchical, against the incapable classes of the community administering its affairs; and the safety with which in any government except a despotism political rights may be intrusted to the people, in so far as regards the choice of their rulers. It is quite manifest that the principal weight in the State will always be possessed by those whom the Natural Aristocracy designates as its rulers; the class best qualified to discharge that important function. Men of education, of integrity, of independent fortune, of leisure, of learning,—men cultivated as well as capable,—will always be preferred by the great majority of the people themselves as their rulers and their representatives. In an aristocratic country, as Poland and Hungary, the noble who belongs to this naturally privileged class will always bear sway over him whom the law alone clothes with privilege; and were universal suffrage established in England, not a single peasant or artisan would be returned to Parliament.

CHAPTER V.

OF PARTY.

Origin of Party—Aristocracy most exposed to it—Venice the only exception—Justifiable party unions—Factionous System—Undermines principle—Destroys confidence in Statesmen—Corrupts private morals—Unites sordid motives with pure—Produces self-deception—Destroys regard for truth—Promotes abuse of the Press—Gives scope to malignant feelings—Passage of Dante—Operation of Faction on inferior Partisans—Effects in paralysing the public Councils—In promoting treasonable proceedings—Defence of Party: Burke, Fox—Conclusion of this subject.

THE existence of parties in an aristocracy is one of the most inseparable attendants of that scheme of policy, and one of its greatest evils, although it affords almost the only check to the power of the governing class. Men among whom the supreme authority in any state is divided naturally desire each to engross a larger portion than falls fairly to his share. When the numbers of the ruling class are considerable, the possession of power enjoyed by each individual is not such as to satisfy the natural appetite for dominion, an appetite ever whetted by a moderate indulgence too scanty to satiate it. The superiority over the bulk of the community being enjoyed by the whole order equally is assumed as a matter of course, and the object of all ambition is then to rise above the rest of the governing caste. Such elevation is the only distinction, except that of rank, services, and personal qualities; the only distinction of the artificial beyond the distinctions proper to the natural aristocracy. Two consequences result: first, the most powerful of the order, the members most amply endowed with the gifts of fortune, whether of riches, or honours, or esteem for talents possessed and services rendered, seek to engross the whole power, to the exclusion of the rest of the order; or secondly, a portion of these—a few individuals, sometimes a single individual or family—form designs of usurping an undue share of authority. The attempts of the first kind lead to an oligarchy; those of the second either lead to a usurpation and tyranny, overthrowing the state, if successful, and if unsuccessful inoperative upon its constitution; or they lead to acquiring a preponderating influence in the

administration of its affairs, without at all changing its government. The efforts made with this object in view, and the steps taken to attain it, give rise to party associations. No two or three families being sufficiently powerful to withstand the jealousy which such an attempt would excite universally in the rest of the order, the course taken is to extend the junction and comprehend other families, and many of the inferior or more dependent nobles. The whole are thus leagued together for a common object, or an object professed to be common, but in reality for the purpose of obtaining and preserving the influence of the leaders in administering the government of the state. Nor is the combination confined to the members of the governing body; the plebeians are appealed to, and the powerful noble families having dependants and followers among them secure support in case of any commotion to which the intrigues of faction may give rise, and obtain an appearance of force and power from the numbers of their adherents—an appearance calculated to give them weight with their own order. For it must be kept in mind that the nature of the government precludes the supposition that any of the plebeian order, or even all the order acting together, can directly aid by lawful and constitutional means the proceedings of the party, inasmuch as the whole powers of the state are possessed exclusively by the patricians. But if one class of individuals or families thus combine and thus act for their own aggrandisement, their proceedings naturally bind together the other families and their adherents to resist the attempt. Hence the ruling body becomes divided into separate, opposing, and conflicting factions; each having its adherents among the poorer nobles, who can directly afford support, being possessed of voices in the government; and also among the plebeians, who can give no regular or direct support, having no such voices.

The Venetian constitution presents the only instance of an aristocracy in which parties were little if at all known, and had certainly no considerable influence upon the working of the government, or the administration of public affairs. The fatal tendency of faction to destroy the existence of such a government, and constantly to mar its operations, early introduced an arrangement by which all such disturbing forces were counteracted. The arbitrary dictatorial powers conferred upon the Council of Ten made it as impossible for a faction to gain any

head in ordinary times, as the dictatorship at Rome rendered all factious movements impracticable while that power existed on some extraordinary occasions. The unexampled duration of the Venetian government without suffering any change was the result of this extraordinary provision in its structure. All the other aristocratic republics of Italy were, as we shall see, the hotbeds of constant factious combinations, and the scenes and the victims of their unprincipled operations.

If the nobles were only animated by a regard for the public—the good of the state at large—or even if they were only influenced by a regard for the interests of their own order, no such party divisions could have place, because no such attempts to engross the direction of the public affairs would be carried further than was dictated by a conscientious desire to further the progress of certain principles and secure the adoption of certain measures. While confined within these narrow bounds, nothing deserving the name of party or faction could exist. Men differ in their opinions; the line of policy which one sincerely believes most conducive to the public good, appears to another less expedient, or positively fraught with peril. Thus differing, each may honestly endeavour to promote his own views, and may consistently join with others who entertain the same opinions. Great heats may even be engendered by this collision; long subsisting animosities may exasperate the parties against each other; but the difference is in the principles really adopted, and the course pursued is dictated by that real difference. Therefore it never can go beyond a certain safe point, because it will always yield to the prevailing regard for the public good, and will therefore stop short of any proceeding by which that good can be assailed or exposed to peril. In such combinations and in such conduct there is nothing blameworthy. They do not merit the name of factious; they can hardly even be termed party proceedings.

But it is a very different and a very pernicious kind of party to which the term faction is generally applied, and which arises out of the contentions for power, and not out of the desire to further principles; and this weed is the natural growth of popular, but most of all, aristocratic government. Men bind themselves together, and obtain the support both of their followers among the ruling orders, and their dependants among the plebeians, that they may be enabled to engross the whole

power in administering public affairs. The possession of power with its attendants, patronage, honour, places, wealth, impunity for malversation, indemnity against charges of maladministration, all the benefits that uncontrolled dominion can bestow upon those who are clothed with it—this is the object of the party combination, and to this every other consideration, among the rest all regard to public duty, all concern for the interests of the community, is sacrificed without hesitation, without scruple, and without remorse. There is generally a pretext of principle put forward to hide the nakedness of the association; but no one is deceived by it, and the less, that the same principles are successively taken up and abandoned by all the factions successively as it suits their position and serves the purpose of the day: so that you shall see the party the most clamorous for certain measures before its accession to office, the readiest to abandon, and even to oppose the same proposal immediately after that event; and the same men who had the most loudly condemned a given course of policy, lay themselves meekly down by its promoters and join in patronizing it, as soon as their interest in the clamour has passed away.

1. This is the first, and it is the worst of the evil effects which party produces. Principles are no longer held sacred in the estimation of mankind; they become secondary and subordinate considerations; they are no more the guides of men's conduct, but the false fabricated pretexts under which the real motive and object is cloaked; they are the mere counters with which the profligate game of faction is played. The highest public duties are thus not merely violated, but brought into open and unblushing contempt. A low tone of political morality becomes the prevailing sentiment of the governing classes in the state. Stern principle is scorned; rigid virtue is a laughing-stock; and men in the humblest stations see those who should be their patterns set them an example of the most scandalous profligacy. Add to this the disgusting hypocrisy which men practise in their loud assertion of opinions which they care nothing about; their solemn declaration of doctrines in which they have no faith; their earnest expression of feelings no deeper than their mouths; their inflated avowal of devotion to principles wholly foreign to their nature and habits. All this makes up a picture which the people must be debauched by beholding so continually unveiled before their eyes.

2. The alienation of the people's affections and confidence is another result of the same combinations. The people see those who have assumed the entire management of their affairs wholly regardless of their interest, only bent upon keeping power in their hands, and affecting to make the public good the guide of their conduct, when they only set up this as a hollow pretext to conceal their real object. A distrust of all public men is the inevitable result; and this is as much excited in the partisans themselves, who take up the cause of the rival party chiefs, as in the portion of the community which stands neuter, and witnesses the factious conflict. The Italian commonwealths were so divided into factions, that hardly any man or woman could be said to stand aloof from them; all were either Bianchi or Neri, Uberti or Buondelmonti, Cerchi or Donati. But we can have no doubt that this extinguished all kind of confidence in their rulers, and accordingly it undermined all regard—not perhaps for the state, because the selfish and factious hatred of some other neighbouring state kept a kind of false patriotism alive—but certainly all regard for the constitution of their own country. The universal consequence was, that the liberties of all those commonwealths were subverted, and the supreme power became, sooner or later, vested in some native or foreign usurper.

3. Akin to this is the fatal tendency to corrupt public and even private morals of the party union, as removing both the great incentive to virtue and the most powerful barrier against vice. Public praise and public blame are no longer distributed according to men's deserts. Whatever a man connected with party does well, he is quite sure to be undervalued, perhaps contemned, possibly assailed, by one-half the community; and let him act ever so ill, he is secure of defence at least, if not of commendation, from the others. The tribunal of public opinion becomes corrupt; it no longer deserves the name of a tribunal. Whoever is cited to its bar knows that half the judges are for him, and half against him, and no sentence, or nothing that may fairly be called a sentence, can be pronounced. Well might Mr. Hume remark, a hundred years ago, that "it is no wonder if faction be so productive of vices of all kinds; for besides that it inflames all the passions, it tends much to remove those great restraints, honour and shame, when men find that no iniquity can lose them the applause of their own party, and no innocence screens them against the calumnies of the opposite."—(Hist., cap. lxix.)

4. But though this seems sufficient, it is far from being all the mischief done by faction. Even in those who form party combinations with purer views, and for the promotion of worthy and patriotic objects, it inevitably works a corruption of the deepest root and most extensive contagion. The nature of the association, the bond which keeps it together, has this unfailing consequence,—the tie is and ever must be a combination to obtain power for the associates. It is true they always state, and in some cases really believe, that they desire power in order to carry their principles into effect. Thus the Guelphs in any given Italian commonwealth may have desired power in order to resist the Emperor; the Ghibellines, in order to resist the See of Rome. The Whigs in the last century among ourselves desired it, in order to keep out the Pretender; and the Tories, in order to protect the church and the monarchy from republican encroachments. But admitting these to have been the real motives of the parties, their mode of action, the means which they all proposed to themselves for giving effect to their several opinions, however conscientiously entertained, were one and the same—the possession of power, vesting that power in the hands of their chiefs, and giving to the followers a rateable proportion of the gifts which the government patronage enabled them to bestow. Thus, too, in the very extreme case of party, that of the United States of America: it is very possible that the Federalists may sincerely believe their principles the most wholesome for guiding the government of the Union, and the Democrats may as honestly consider theirs the true means of preserving the great Republic. This is quite possible; but what is quite certain is, that the primary object with each party is the election of the President, and the result of its victory is the removal of above 3000 placemen, from the chief magistrate at Washington down to the postmaster in every village, to make way for successors from its own body. The same excess of party violence may not take place in this country, where the same personal interest is not felt in the conflict, because so universal a change is not the result of a change of ministry. But we approach nearly to it; and there pervades the whole community a combination of direct individual interest with the profession of political principles: so that while the nature of the game universally played induces very many to espouse the cause by affecting the opinions which belong to its supporters (and of the universal tendency of this we

have already spoken), the manner in which the game is and must of necessity be played creates the other, and perhaps more pernicious evil, of which we are now speaking, by allying inseparably the possession of opinions, and the exertions made to give them effect, with the direct interest of the individual, and thus corrupting even men who begin by conscientiously holding those opinions, and honestly labouring for their establishment.

For observe what inevitably ensues. The party principle and the personal interest for a time coincide; but the moment is sure to come when they no longer agree, and either principle or power must be sacrificed. The change is sometimes made suddenly, openly, with audacious effrontery; more frequently it is effected with greater caution and less boldness, and with every species of falsehood and hypocrisy. But at all times the union of personal interest with political principle, the fact (the fact quite inseparable from party operations) that the same acts which tend to promote party objects also tend, in the very same degree, to further individual interests, produces, and must inevitably produce, the most reckless disregard of all but party ties and party duties, and must sap the very foundations of private as well as public morals. This is the necessary consequence of the union, and this explains the conduct of men who, upon other matters, are not deficient in moral principle, but who cast all such ties away when party objects are concerned. The process of self-deception is plain. The partisan covers over the iniquity of his conduct with the guise of principle and patriotism, pursues his personal gratification as if he were performing only a public duty, and not only affects to be guided by the purest of motives, but oftentimes blinds himself into a belief that he has no other incentive to a course of conduct the most sordid, or the most malignant. His experience of party movements must be exceedingly limited who cannot at once point to numberless instances of men, in all the other transactions of life tolerably honest and pure, who have gratified the most selfish propensities of our nature, or given vent to its most spiteful feelings, while they covered over the naturally hideous aspect of their intrigues or their rancour with the party varnish of a zeal for the good cause, and a vehement hostility to its enemies.

It is in two ways that this injury is done to men's morals by the party tic. A regard for truth is abandoned, and kindly, cha-

ritable, even ordinarily candid feelings are blunted, nay extirpated.

(1.) The basis of all morals is a sacred and even delicate regard for truth, a sentiment of proud disdain at the bare thought of being humbled to a falsehood, a feeling of disgust at all intentional violation of that paramount duty. But how many men are there who will scruple little to exaggerate or extenuate facts, nay, to suppress the truth they know, and even forge what they are well aware is false coin, so as they can make the concealment available to the defence of their party, or give the fiction currency to that party's gain! Look to the perpetual misstatements of the party press in England, somewhat worse in America, in France not quite so bad as in either of the English countries, yet occasionally rivalling both. The unblushing falsehoods propagated, the unretracted misstatements persisted in after exposure* for the support of their party, through these channels of public information, and which might be rendered the channels of popular instruction, made the first minister, the leader of the popular party, declare in parliament, no longer ago than the year 1839, that he thought it questionable "if the people of England would bear much

* This is the very worst of the offences committed by the periodical press. If the public will have daily newspapers—that is, works published with such haste as to render accuracy of statement and of argument impracticable—they must lay their account with errors of every kind, among others with the grossest misstatements being even innocently promulgated. No one can be unfair enough to blame very severely the errors flowing only from such a source; they are the unavoidable consequences of the hard necessity under which the ephemeral work is prepared and published. But if the authors refuse to retract, still more if they persist in propagating the error after it has been exposed, the defence wholly fails, and the statement which was a mistake becomes a wilful falsehood. Nay, the unretracted error becomes a falsehood by relation backwards, if not contradicted when exposed. Now it is quite notorious that newspapers generally speaking refuse to admit such errors, nay, often persist in repeating them, for fear of injuring their credit for accuracy, and so damaging their sale. This shameful iniquity, like many others, never could be perpetrated by individuals known and accessible to the public indignation in their own persons. Men acting, that is, writing for publication, in the dark, whose individuality is uncertain, who may be one or may be more in number, who are not answerable in their own persons for any falsehood however gross, or any slander however foul—this anonymous tyrant, free from all control, and not even exposed to the risks which the most despotic of known tyrants cannot always escape—is licensed to do such things as we are here, in common with all honest and rational men, holding up to public abhorrence; and it must be added, that the freedom with which this licence has been used during the last twenty years has effectually destroyed the influence of the press, by degrading its character and by rousing a general feeling of indignation and scorn against its scandalous abuses.

longer the falsehoods of the press, its not saying one word of truth, its perversion of every fact and of every reason." The statement may be somewhat exaggerated in its detail, as speeches are wont to be which men deliver under momentary excitement; but the foundation of the charge is wholly irremovable. It is no light evil in any community that one part of it are trained by party to trick and deception, while another are drawn into unreflecting dupery,—that the feelings of public men are rendered callous to public opinion by seeing its oracles so often devoid of all truth and justice,—and that the dictates of right and wrong are confounded by observing how the best of party men, themselves perhaps incapable of such baseness, are yet willing enough to share in the benefits which their followers thus render to their cause.

(2.) Next to the encouragement of falsehood the gratification of the malignant feelings is the worst point of the party compact. Indeed this is of even a more extended influence than the former mischief, because there are many who must be removed from all direct interest in the success of a faction, or of a factious operation, and who nevertheless are prone to gratify the spiteful propensities of their nature. This guides most partisans more or less, and converts society into a multitude of beings actuated towards each other rather with the spirit of fiends than of men. They never would feel such unworthy sentiments, assuredly they never would give them vent, but for the party spirit that moves their souls, and makes them pretend, nay, often makes them really think, that they are only furthering an important principle when they are vomiting forth the venom of "envy, hatred, malice, and all uncharitableness" against their adversaries. The eloquent invective of the great Italian poet, on the effects of faction in the Italian cities of his day, is familiar to most readers; and the pleasing contrast, which he paints with his wonted vigour and concision, of Soritello rushing to the embrace of the great Mantuan bard on simply hearing that he came from the same town with himself.* The war of the

* *Ahi serra Italia, di dolore ostello
Nave senza nocchier' in gran tempesta
Non donna di provincia, ma bordello.*

Ah! Italy, of crimes thou common inn,
Bark without steersman in the tempest gale,
No village frail one, gentle yet though frail,
Strumpet, thy guilt's less hateful than thy din!

Italian factions was carried on by arms and not by slander; the party spleen found its vent in proscription, banishment, confiscations, executions, tortures, massacres. But the evil plant was the same, it shot its roots into the same soil—the bad passions of the human heart; it was fostered by the same devices, it was sheltered from the breath of public indignation by the same self-deception, confounding selfishness with duty; its growth was encouraged and its shoots propagated by the same delusion which stifled the warnings of conscience, reconciled the mind to its own degradation, and thus counteracted the naturally implanted principles of its decay.

The two effects of party, falsehood and malice, to which we have been adverting, have this in common, that their contagion is not confined to the higher natures which chiefs may be reasonably supposed to possess—they extend to the humblest of their followers. In military operations the tricks which are involved in a stratagem little affect the men under the command of those who devise and order it; they are generally unaware of the part which they are called upon to execute, and have no share in the deception which is practised. Even the cruelties of which they are the blind instruments affect their moral character far less than if they unbidden performed their part in the bloody fray. But the falsehood of party warfare, and, still more, its malignity, is actively partaken of by all, down to the lowest retainer. Nor can there be a stronger illustration of this searching nature of the contagion than the well-known fact, that the humbler retainers are the most unscrupulous and most rancorous members of every faction. You have only to compare the violence of a country club or newspaper, their daring contempt of all truth, and even probability in their fictions, with the analogous proceedings of the factions in the capital, to be convinced how entirely the party taint permeates the mass, and how active the contagion is to gangrene the remotest extremities of the body—as the meaner parts of the natural frame furthest removed from the sources of sensation and of circulation are ever the most ready prey to mortification.

(3.) The less obvious evils of party have now been enumerated and examined. Those which are most open to ordinary observation need not detain us so long; but they are not the less striking for being the more obvious. It is no little evil that any community should be so circumstanced as necessarily to be

deprived of the effective services of half its citizens, whether for council in difficulties, or for defence against foreign aggression. Yet thus paralysed are states in which parties are equally balanced. Nevertheless, there is much exaggeration in the view which represents the party opposed to the ruling power as always wholly excluded from all voice in the government. That party exercises some and a sensible influence wherever the business of the state is conducted in a senate or deliberative council, open to both parties. The opposition prevents some bad measures from being carried; prevents more from ever being proposed; alters and amends some; forces others upon a reluctant administration. So that the course pursued by the supreme power is in such states in a direction given by the combination of the two forces; the diagonal, and not either side of the parallelogram, as we explained in the second chapter. Nevertheless, though not excluded from all voice, the opposition often occasions alterations, and interposes obstacles without regard to the public good. The objections are taken not on their own merits, not because the measures propounded by the government are really open to objection, but merely because those measures are propounded by the government. Many good measures are thus defeated; many changes are effected in those carried, changes detrimental to the public interests. Sometimes peace has been precipitated, as in the treaty of Utrecht, when the interests of the country required a perseverance in the war that had cost so much, and proceeded so successfully. But it was a Whig war, under a Whig captain, and therefore the press and the party ran it down, with its conquering general, in order that the Tories might gain a triumph over their adversaries. What cared they if this could only be won by giving France a triumph over England? So the most profligate opposition that ever minister encountered drove Walpole into a war with Spain which his good sense disapproved, and which the party chiefs afterwards distinctly confessed to Mr. Burke that they excited solely with the view of displacing their political adversary. Among the crimes of party in modern times this assuredly stands the blackest. The peace of twenty years was broken, and Europe was involved in the countless miseries of warfare, without the shadow of a reason either in policy or in justice, solely to gratify the lust of power raging in a few families and their adherents, lords of the English Crown and the English

Parliament. The factions in the Italian Republics can alone furnish a parallel to this, the most disgraceful passage in our party history.

It is indeed a serious evil to any community that there should always exist within its bounds a powerful body of men on whom the enemies of the state, foreign or domestic, may, generally speaking, reckon for countenance and support. They never cease to pretend that they are far, very far, from wishing to impede the public service. In some instances of urgent danger hovering over the country, they find it so far necessary to court the public favour, and disarm the general indignation, as to withhold their opposition, or even to lend a faint or perfunctory support to the measures of their adversaries. In other instances, where their resistance would be hopeless, they are unwilling to incur the odium for nothing. But it very rarely indeed happens that in any posture, however critical, of public affairs, the party in opposition refrains from exercising its power if it can reckon upon defeating the plans of the government. In the modern Italian Republics, as well as in those of ancient Greece, the faction opposed to the ruling party never hesitated to join the public enemy, and to serve against their own country. No man was ever abhorred or despised, or even distrusted, for such treason. Indeed no man was expected to do otherwise if the motive existed for such a proceeding, and the occasion favoured its adoption. In modern times the motions of the government are impeded, and the interests of the enemy are furthered, by as sure though not so shameless a breach of public duty and violation of the allegiance which all states have a right to demand from all their subjects. That certain benefits are by many ascribed to party is well known to all who have read Burke and Fox; and it is impossible to deny that it may be expedient, and even necessary, in certain emergencies of public affairs, for men who apprehend the same peril from a policy pursued by the government of their country, to form a combination in order to resist the measures adopted or threatened, and to waive minor differences of opinion in order to act in concert and with effect, preferring, as Mr. Fox says, the giving up something to a friend rather than surrender everything to an enemy—yielding themselves to the force of the bond described by Mr. Burke as uniting wise and good men in all ages—that arising from an identity of sentiment upon the sum of affairs. This forms the

true description of the party bond, where it is justifiable, and where it is formed upon public principles. But it presents no defence of a constant and perpetual existence of factious combinations; of dividing the whole community into two or more classes, habitually opposed to each other; of marshalling the people as well as the leading statesmen into bands, the members of which agree in everything with one another, but most of all in both approving whatever their chiefs propose, and in resisting whatever proceeds from the other faction. Occasional party unions for a precise definite object, or for accomplishing some desirable end, beneficial to the state, for frustrating some attempt injurious to the state, differ more widely from what is called party than the life of the habitual sot differs from that of the sober man who tastes the fruit of the vine to recreate his exhausted strength, or counteract a dangerous disease.

Some there are, indeed, who push their defence of party a great deal further, and who hold it right that at all times there should be a party united in opposing the existing government. Their argument is founded on the advantage of the people having some combined and disciplined force to resist the body which is ever of necessity combined and disciplined on the side of power, by the pay and the rank which the possessors of power distribute. These reasoners further contend that this arrangement secures a thorough investigation of all measures propounded by the government, and establishes a jealous vigilance of the whole of the government's conduct. There may be some little truth in this statement; but surely no contrivance can be more clumsy than one which would secure a correct working of the machine by creating obstacles that may at any moment suspend its movements; and no check can be more costly than one which must occasion a perpetual loss of power, a loss, too, always great in proportion to the force required to be exerted; that is in proportion to the necessity of union and the danger of dissension. Only conceive a person's astonishment who should for the first time be informed that, in order to prevent an erroneous policy from becoming the guide of a nation's councils, one-half her statesmen, and nearly one-half her people, were continually and strenuously employed in working against the other half engaged in the public service! "What are all these able, and experienced, and active men about?" (would be his exclamation). "Their whole lives are spent in political con-

tention, and are as much devoted to public affairs as those of the ruling party themselves. With what views do they volunteer their toil, and in what direction are their efforts bent?" To this there can be but one answer given, and it would certainly astound the unpractised inquirer—"The only inspiration of these men is patriotism—their sole object the good of their country; the course they take to pursue this end is opposing every one measure of the government—working against the whole policy of the state." It is not to be doubted that if the credulity of the inquirer made him trust the truth of this information as to the motives of the party, his sagacity would at least incline him to suggest that the end in view might be attained by somewhat more safe and more natural means.

But although we have pointed out the great evils of party and its constant liability to abuse, it must not be supposed that every one who enlists himself under party banners is therefore a person devoid of wisdom, far less of integrity. Men who really wish well to their country, and who have no desire so near their hearts as the furtherance of principles to which they are conscientiously and deliberately attached, will often find themselves under the necessity of acting with others professing the same opinions as themselves, because they see little or no prospect of giving effect to those opinions if they stand and act alone in the State. The preceding inquiry tends to make us jealous and distrustful of party unions, and of the motives of all who form them; but it ought not to close our ears to all that may be urged in their defence. The best proof which they who thus combine can give of their motives being pure is their patriotic conduct upon great questions; the sure proof of their course being unprincipled is their holding a different conduct on the same questions when in power and when in opposition; above all, their dislike to see their own policy adopted by their adversaries. This is a test of their sincerity which the people ought ever to apply.

CHAPTER VI.

VICES AND VIRTUES OF THE ARISTOCRATIC POLITY.*

Defects of Aristocracy—No responsible Rulers—No influence of Public Opinion—Comparison with other Governments—Interests in conflict with public duty—Illustrations from Roman Constitution; Modern Aristocracies; English and French Constitutions—Legislation influenced by Aristocratic interests—Similar evils in Democracy—Evils of Hereditary Privileges—Tendency to make bad Rulers—Comparison of Aristocracy and Democracy—Corruption of Morals—Virtue of French Republicans—Galling yoke of Aristocracy—Merits of Aristocracy; firmness of purpose—Resistance to change—House of Lords—Contrast of Democracy—Republican attempts to resist the Natural Aristocracy—Aristocracies pacific—Exceptions, Venice and Rome—Encouragement of Genius—Comparison with Democracy and Monarchy—Spirit of personal honour—Contrast of Democracy—F. Paul's opinion—Aristocratic body aids the civil Magistrate—Error committed in our Colonies.

THE vices of aristocratic government are inseparable from its nature, capable only of some mitigation, wholly incapable of entire counteraction, affecting other governments in which the aristocratic principle exists though mixed with the monarchical or the democratical, and affecting these more or less according as the aristocratic principle enters more or less largely into their respective systems. We are now to examine the vices, and afterwards to consider the redeeming virtues of the aristocratic polity.

1. The first and fundamental defect of this government is that supreme power is vested in a body of individuals wholly irresponsible. That the supreme power is vested in one body without any control from others is doubtless a great defect; but it is only a defect which every pure form of government has, every government which is not mixed; it is the very essence of the pure as contradistinguished from the mixed forms of government. But the lodging of supreme power in persons not individually responsible is the vice of all popular government, and of an aristocracy as much as a democracy—indeed much more; because no democracy can exist without either the occasional or the periodical exercise of a controlling power by the body of the people. If those to whom the supreme power is confided are

* Some of these, especially the evils of party, have been already examined. But party is not so peculiar to aristocratic government as the incidents here treated of.

not bound at certain intervals to come before the people, either for a confirmation of their acts or for a renewal of their trust, the government is no longer democratic, but aristocratic, or oligarchical. While the democratic rulers exercise the powers of their trust, they are like the nobles in an aristocracy, screened from individual blame or attack by belonging to a large body, all of whom are implicated in the acts of the state. The main difference, and a most important one, is that they must account to the people, either when their acts come to be confirmed, or when their term of office expires; whereas the nobles in an aristocracy never can be called to any account.

It thus happens that these irresponsible persons have neither the institutional check to their conduct, nor the natural check, neither rendering any account nor suffering any penalty for malversation, nor yet watched and prevented by the force of public opinion. He who is only the member of a council consisting of five or six hundred, or even fifty or sixty persons, has the blame of misconduct, and the responsibility for failure, so much divided with his colleagues, that he cares little for the rateable share of it that falls upon himself. What member of the Venetian Great Council cared for the imprecations of the people? Who regarded the horror generally excited by such atrocious acts as the judicial murder of Carmagnola against every rule of justice, or the cruel and unending persecution of Foscari? No single ruler, no council of eight or nine members under an absolute monarchy, would have dared to perpetrate such wickedness, especially when barbarous cruelty was complicated with base, and revolting, and despicable fraud.—So, what Roman senator felt scared at the thoughts of the popular odium which the decrees of the senate raised against it in the Marian and Syllan contests?—What member of our own House of Lords takes very sorely to heart all that at various times is flung out of scorn, or ridicule, or hatred, against hereditary lawgivers, in order to assail that illustrious senate? Nor is it only that any given person may be in the minority who had no hand in doing the act reprobated. Even those who were its supporters, nay, its promoters, hide themselves in the number who concurred, and among them escape from all serious censure.

* These will be fully treated of when we come to examine the Venetian constitution.

We have seen how the party union divides and even destroys all individual responsibility. Just so does the association of all the nobles forming the aristocracy, and thus governing the country. Each keeps the other in countenance, and all screen themselves under the name of the order. We have seen (Chap. V.) how all the members of a party do things for its benefit which none of them would venture to do for his own advantage. Just so do all the nobles join in doing things for the benefit of their order, the ruling body, which each would be scared from attempting on his own account by the dread of public censure or of personal consequences. "It is all for the interest of the party," say the members of a faction.—"It is all for the interest of our order," say the nobles. The prince is but too much disposed to look only among princes for his public, and to regard their praise or their blame as all he has to consider. But he is far less confident in the fellow feeling of the small circle he lives in, and which he calls the world, than the aristocracy, because they are a numerous body, and each of their number can well look to the class as the public, the people, the world, none other having any voice, from the nature of the constitution, in state affairs. It is the constant and invariable disposition of all men in resolving upon the line of conduct which they shall pursue, so far as they shape it by public opinion, to cast their eyes rather upon their own class than the world at large. Judges and advocates look to the bar; "The opinion of Westminster Hall" is a well-understood expression among our own sages of the law; it is almost to them synonymous with the opinion of mankind. If our statesmen do not confine their regards to the chambers of parliament, it is because they are subject to the direct interposition of the people out of doors. Were there no House of Commons, and were the whole powers of government vested in the peers, each patrician would look to that body alone, and shape his conduct in accordance with its views. The case supposed would be a pure aristocracy; and this is the first and fundamental vice of that scheme of polity. The supreme power is vested in the hands of men who form a body numerous enough to be to themselves as the whole world, and those men never look beyond it. The tendency of the constitution is to place them wholly above the influence of public opinion, which restrains even tyrants in their course. In modern times, it is true, this

irresponsibility never can be complete, because the natural aristocracy interferes with it. The respect due to talents, learning, wealth, even virtue, obtains for those who belong not to the privileged class a certain weight in society; and their opinion will be in some degree regarded by the members of the ruling body. But such a control must always be exceedingly slight and uncertain, compared with its effects upon the very few men, or the single man, who in a monarchy wields the supreme power of the state.

2. The want of individual responsibility in an aristocracy does not stop here. As the nobles, the rulers of the state, are uncontrolled by public opinion, they are also removed above the check which acts, and alone acts, on the prince in absolute monarchies; they have little or no fear of personal violence. Their numbers place them in a condition to resist any ordinary tumults; and the risk of assassination, which even sultans and czars run, is very little thought of by individuals who form an indestructible body. Were there a powerful leader to whom the public indignation might point, he would be exposed to this peril; but there can be no such chief in the ordinary times of an aristocratic government, all the efforts of the governing body being directed to prevent any such influence from being acquired as directly tending to subvert the constitution. Hence the people can only conspire, or rise against the whole order, and this risk is little heeded by individuals, or by the body at large. At the same time, as a general rising of their subjects, excluded from all participation in the administration of affairs, might be the result of great oppression, the nobles of Venice, the most lasting of all aristocracies, took care to govern with a light and kindly hand, and reserved the principal exertions of arbitrary power, as we shall hereafter see, for the factions, conspiracies, and ambitious views which might arise among the members of their own order.

3. It is the worst of all the vices of an aristocracy that the interests of the ruling body are of necessity distinct from those of the community at large, and consequently their duties as governors are in perpetual opposition to their interests, and therefore to their wishes as individuals and as members of the government. Somewhat of the same vice no doubt belongs to a monarchy, and is corrected by the other bodies who share with

the sovereign in a mixed monarchy. But there is this great difference in an aristocracy, that the conflicting interests in a prince are confined to himself, his own amassing of wealth, his own indulgence of personal caprice, his own partiality to his family and adherents; whereas in an aristocracy there are hundreds of families, all of whom with their dependants are singled out as objects of exclusive favour, and clothed with peculiar privileges, which must necessarily be enjoyed at the expense of the whole community. We have only to consider the legislation of Rome in the early or aristocratic times of the Republic to satisfy ourselves how unremittingly and how shamefully the patrician body will exercise the supreme power which resides in it for its own exclusive benefit, and in contempt of the people's interests. The public land was almost wholly monopolised by the governing class. Some small portion having originally been bestowed on the plebeians, the acquisitions obtained by conquests which their toil and blood had made were retained in the hands of the state, but enjoyed entirely by the patricians as tenants at a nominal rent, and tenants who could transfer and mortgage their possessory titles at pleasure. The people too were prevented from exercising any but the meaner kinds only of trades, besides cultivating their pittance of the soil; while the lucrative kinds of traffic, and that of the sea, were reserved for the nobles. Then the capital which they were thus enabled to amass was lent at heavy interest to the poor plebeians, and the rigour of the law against debtors placed them under the most strict and cruel control of the patricians. Lastly, the military force of the state was supplied entirely by the plebeians, while for some ages the places of rank in the army, raised by a strict conscription, were reserved for the upper classes. All this is independent of the laws which secured the exclusive powers of government and enjoyment of offices to the nobility. We shall hereafter see the like fruits of patrician dominion in the Spartan legislature, and in that of the Italian aristocracies; but no instance is so striking as that which the Roman history affords.

It is the same in a more limited degree with several governments which give a preponderance to the aristocracy, and the mischief bears always a pretty exact proportion to that preponderance. The Swiss republics and the Polish and Hungarian constitutions will furnish us with illustrations of this proposition; but the history of

our own legislature in England is not barren of such examples; and the almost entire extinction of aristocratic influence in France may be reckoned a principal cause of the tendency which the legislature of that great, opulent, and flourishing country has in recent times exhibited towards popular arrangements. Not going back to feudal legislation, but reserving that for a separate consideration of the Feudal Aristocracy, we need only recur to the times after that feudal government had ceased, and only left behind it the influence of the aristocracy in the mixed monarchy, to find examples in abundance of its effects upon the course of legislation. Beside the laws made, and those retained against all principles of sound policy, and against the most important interests of the community, in order to retain the preponderance of the patrician body, laws restraining the commerce in land, and restricting the popular voice in the legislature—we find important advantages granted to landowners above the owners of all other property. There is no occasion to enumerate more than a very few of these. The right of voting for members of parliament has never been severed from the possession of land, except in the two cases of the freemen in boroughs and the three universities. A man may possess a million of money in the funds, or acquired by commerce, and he has no voice in choosing his representatives, though the owner of an acre or two of land has his vote, and may have it in every county in which he owns an acre or two. While the law of settlement continued in its original rigour, any pauper might, though not actually chargeable, be conveyed from the place of his residence to that of his birth; but if he owned the corner of a freehold anywhere, he might there abide and defy the unparalleled cruelty of that law. While the tax falls heavy upon succession to personal estate, the produce of a man's genius and toil for a whole life of hard fare, and hard work, and pinching economy, endured by his family or by himself, and at the moment of their succession, when it may be the most wanted, this hard-earned but well-gotten treasure is condemned to pay large tribute, while the broad acres that have descended through a long line of lazy ancestors wholly escape the hand of the tax-gatherer. The laws affecting the rate of interest and the commerce in grain may no doubt be defended, the one upon the score of a tender regard for the interests of poor debtors, and the other on the ground of

securing a steady supply of food to the people; but we cannot shut our eyes to the fact, that these objects are accomplished, through benefits in the first instance conferred, or supposed to be conferred, upon the landed aristocracy, whose incomes are somewhat diminished, and whose rents are materially increased by the prohibitory system; and we may further be assured that their persuasion of its being for their benefit has always worked powerfully in making them so zealous to uphold it.

As regards the administration of public affairs, the interests of the aristocracy as a body are always sure to be consulted, and not those of the people. But individuals are not likely to obtain the gratification of their selfish desires at the public expense—the rest of the order are sure to have their jealousy aroused by any such attempts. If however one party obtains the decided mastery, there will be nothing to prevent its flagrantly sacrificing the interests of the community to those of its own adherents. The only check upon such gross malversation is to be found in the party combinations of their adversaries, and this benefit of the party principle, together with the price paid for it, we have already examined at length. Generally speaking, we may lay it down as certain, that the gross malversation by which individual interests are predominant over those of the community at large will be found more easily affected, and consequently carried to the greater excess, by the ruling party of a democracy, than by the predominant faction of an aristocratic republic. There can hardly be conceived under any form of polity a more absolutely tyrannical rule than that of the dominant body in a democracy when it has, as in order to rule for any length of time it must have, the full support of the great mass of the people. A refuge from this intolerable tyranny is only to be found in a balance of conflicting parties, which renders the community a scene of unceasing factious broils, hardly consistent with the existence of a regular government, and wholly incompatible with a tranquil and orderly condition of civil society.

4. The principal, certainly the most glaring defect of a monarchy is, that the hereditary succession, which is an essential part of the system, deprives the community of all security for those qualities being found in its ruler which are most essential

to the public good. The chances of birth expose the state to perpetual risk of either a wicked, or an imprudent, or an imbecile ruler becoming intrusted with the sum of affairs. So an hereditary aristocracy exposes the country to a like risk of perverse or incapable persons being intrusted with supreme power. The aristocratic form, then, has this vice, in common with the monarchical, but has not the redeeming quality of avoiding, by hereditary succession, the turmoil and the shocks to public tranquillity which arise from a conflict for power. On the contrary, we have seen that the factious tendency is more predominant in this than in any other constitution. It must nevertheless be admitted that the risk of many incapable or wicked rulers being found in the body of the nobles is far less considerable than the risk of a wicked or incapable ruler becoming the sovereign in a monarchy. In one respect the two forms of government approach to a closer resemblance. The education of the rulers in both is such as peculiarly to unfit them for worthily exercising the high functions of their station. The training of patricians, next to that of princes, is peculiarly adapted to spoil them. They are born to power and preeminence, and they know that, do what they will, they must ever continue to retain it. They see no superiors; their only intercourse is with rivals, or associates, or adherents, and other inferiors. They are pampered by the gifts of fortune in various other shapes. Their industry is confined to the occupations which give a play to the bad passions, and do not maintain a healthy frame of mind. Intrigue, violence, malignity, revenge are engendered in the wealthier members of the body and the chiefs of parties. Insolence towards the people, with subserviency to their wealthier brethren, are engendered in the needy individuals of a body which extends all its legal rights and privileges to its present members—too proud to work, not too proud to beg, mean enough to be the instruments of other men's misdeeds, base enough to add their own. There can be no kind of comparison between the education of rulers in a democratic, or a mixed constitution and an aristocracy; there can be no kind of comparison between the tendency of republican and of aristocratic institutions, and their sinister effects on the characters of men engaged in administering their powers. The democratic regimen is, in all respects, incomparably more wholesome to the

character, and more useful in forming virtuous and capable men—men whom it is safe and beneficial for a community to trust.

5. The tendency of an aristocracy is further to promote general dissoluteness of manners, self-indulgence, and extravagance, while that of a democratic government manifestly inclines towards the severer virtues of temperance, self-denial, frugality. Rapacity, or any care for amassing wealth, is little known in a pure republic: it confers no distinction until the time arrives when it can give influence and power, and then it becomes a subject of general and perilous suspicion. But individual wealth is congenial to the aristocratic constitution. When the Committee of Public Safety governed France for fifteen months, and almost disposed of the riches of Europe as well as of France, these decemvirs only allowed themselves ten francs (about nine shillings) a-day for their whole expenses. Each month there was issued to the Ten a rouleau of three hundred francs (about twelve pounds) for their whole expenses; and when Robespierre, St. Just, and Couthon were put to death on the 10th Thermidor, 1794, there were found in the possession of each no greater sum than the seven or eight pounds of their rouleau which remained unexpended. These men had for many months the uncontrolled management of millions, subject to no account whatever.

6. The qualities which an aristocracy naturally engenders in the ruling class of insolence, selfishness, luxurious indulgence, are extremely calculated to render their yoke oppressive and galling. Accordingly there is no form of government more odious to the people. We naturally feel much less repugnance to the superiority of a sovereign, removed far above us, than to one more near our own level. The same sentiment which makes the rule of an upstart, lately on a footing with ourselves, intolerable, makes the rule of a nobility more hateful than that of a prince. It is more humbling to the natural pride and self-love of man. It is, besides, more vexatious, because it is less remote. The sovereign comes very little in contact and conflict with the body of the people; the patricians are far more near, and their yoke is far more felt. The general tendency of aristocracy is not only to vex and harass, but to enslave men's minds. They become possessed with exaggerated notions of the importance of their fellow citizens in the upper classes;

they bow to their authority as individuals, and not merely as members of the ruling body—transferring the allegiance which the order justly claims, as ruler, to the individuals of whom it is composed; they also ape their manners, and affect their society. Hence an end to all independent, manly conduct. We are now speaking merely of a proper aristocracy, or one in which the supreme power is held by a body of nobles in their corporate capacity. If to this be added the possession of power by each or by many individuals of the privileged order, as in the Feudal System, the grievance is infinitely greater; but of that we are to treat separately. The general unpopularity of an aristocracy underwent an exception in the remarkable instance of Venice. The ruling body in that celebrated republic, and the government generally, was exceedingly popular. In the Roman republic the case was widely different. While the aristocracy continued unmixed nothing could be more odious to the people; and the constant struggles between the patricians and plebeians, frequently breaking out in open revolt, and all but civil war, still more frequently demanding a dictatorial magistracy to save them from it, were a sufficient proof that the constitution was unpopular, notwithstanding all the superstitious reverence of the Romans for established things, and all their devotion to the interests of their country.

We are now to see if the aristocratic constitution possesses any redeeming qualities, any virtues to be set in opposition to so many imperfections. It is by no means devoid of such merits, although they may not amount to anything like a complete equipoise in the scale.

1. There cannot be any doubt that the quality of firmness and steadiness of purpose belongs peculiarly to an aristocracy. The very vices which we have been considering lead naturally to this virtue, and it is a very great merit in any system of government. The members of the ruling body support each other—they disregard all sudden ebullitions of popular discontent—they will not partake of sudden panics—nor will they abandon plans of policy foreign or domestic on the first failure, as the multitude are ever prone to do. A system of administration, a plan of finance, a measure of commercial or agricultural legislation, a project of criminal or other judicial administration—may seem to have failed, yet the patrician body will give it

a further trial. They adopted it on mature deliberation, and not on the spur of a passing occasion; they will not be hastily driven from it. So if hostilities have been entered into, the first disaster disposes the multitude to wish for peace at all hazards—they who had, perhaps, driven the government to rush into the war. But if the aristocratic rulers have taken the field they will stand the hazard of repeated defeats, and only abandon the struggle when it has become desperate, or when an opportunity presents itself of making an advantageous peace. The admirable conduct of the Venetian government will afford us signal illustrations of this position.

2. Akin to this merit is the slowness with which such a government is induced to adopt any great change. Indeed, resistance to change is peculiarly the characteristic of an aristocracy; and the members of the ruling body and their adherents obtain at all periods, in a greater or less degree, the power of stemming the revolutionary tide. This makes them equally resist improvements; but it tends to steady and poise the political machine. The same quality of resisting change, and the same general firmness of purpose, belong to the aristocratic body in all mixed governments. In these it is productive of great benefit upon the whole, although it not unfrequently stands in the way of improvements, both constitutional, economical, and administrative. The history of our own House of Lords abounds in examples sufficiently striking of these truths. Whatever faults their enemies have imputed to the peers as a body, no one has been so unreflecting as to deny them the praise of firm, steadfast resolution, and of acting up to their resolves. But for their determination to resist measures which they deemed detrimental to the state, or to which they had objections from a regard for the interests of their own order, many measures of crude and hasty legislation would have passed in almost every parliament. If ever they have yielded it has been when the voice of the country at large was so unanimous, and when they were so divided among themselves, that a further resistance became attended with greater mischiefs than any which they could ascribe to the operation of the proposed changes. One, indeed the most remarkable, instance of this concession was their suffering the Reform Bill, in 1832, to pass, by seceding from the struggle. But the crown and the people were then united, and a creation of new peers, fatal to the aristocratic

branch of the constitution, would have been the inevitable consequence of the bill being rejected. Of this its adversaries had timely notice, and they very wisely and patriotically suffered it to pass by their secession. They have since amply regained any influence which they then lost; for, during the last ten years, they have had a preponderating share in the government of the country.

The tendency of every government, as well as an aristocracy, is to resist change; and self-preservation is, with forms of polity as with the human frame, the first law of nature. But it may be doubted whether the aristocratic form be not above all others jealous of change, quick to perceive a risk of it in every measure of improvement, and averse to whatever may by any possibility, how remote soever, arm any other class than the ruling order with the power of shaking or of sharing its dominion. It is quite clear that the democratic system has the least of this jealousy, and tends the most to promote plans of general improvement, because whatever improves the people's condition augments their influence and confirms their supremacy. All jealousy is in this system directed against individual ambition and the formation of a privileged class. Attempts are made to prevent the accumulation of wealth, as regards landed property. Those attempts are frequently successful, by restraining the power of devise; and similar efforts are made, and always vainly made, to resist the force of the natural aristocracy in other particulars. The pride of ancestry, and the distinctions thence arising, can never be eradicated: but the prevention of any substantial privileges from accruing to those who are well descended is not at all difficult; and any such distinctions as would be conferred by an order of merit are carefully withheld even from the highest civil and military services. The project in America of a society or order of civil merit, the *Cincinnati*, soon after the revolutionary war had ended, and the independence was established, met with some support; but it was speedily frowned down by the general opinion of the democratic party, and no similar attempt has ever since been made. Bestowing all offices for a very short term is the constant expedient resorted to for obstructing plans of individual ambition; and the tendency of war inevitably to raise up a body of powerful men, frequently a single person of predominant popularity and influence, has, in America, combined with

the other happy circumstances of its position, discouraged all military spirit, and tended to preserve the public tranquillity. To such precautions as these the republican jealousy of change is generally confined, while free scope is given to all improvements, and encouragement afforded without any obstruction whatever to all the exertions by which individuals can either better their own condition or extend the prosperity of the community. This is one of the greatest merits of democratic government; and it stands in a very marked contrast to that extreme apprehension of all change which pervades both absolute monarchies, and still more aristocracies, making the rulers habitually apprehensive of every movement, however slight, and consequently of almost every improvement that can be projected—haunting them with incessant alarms, and causing them to resist all the advances which the people can make, not merely for the progress itself at any given moment, but for fear of its leading to other changes unseen, or only seen through the magnifying power of their jealous fancy. We might have set down this as among the worst vices of the aristocratic system, but that it naturally connects itself with that conservative spirit and power of resistance which in any given constitution must be deemed a merit; it is the excess and the abuse of the conservative principle.

3. It is not to be denied that an aristocratic government will generally be found to be a pacific one. This great virtue, covering as it does many transgressions, it owes partly to its dislike of change, partly to its being ill adapted for military movements, but chiefly to its jealousy of individual eminence, likely to be raised upon the ground of military success, and to the want of any gratification of individual ambition in the progress of conquest. When the Venetian Government addicted itself to conquests, it was obliged to adopt the plan of intrusting its armies and navies only to foreign mercenaries, in order to escape the dangers of usurpation and change of government. The Roman aristocracy is a more remarkable exception to the rule; but the popular party, the weight long acquired by the plebeians, had a great share in forming this warlike propensity. Sparta was at all times averse to war, and at all times proved inefficient as a military power.

4. We may undoubtedly set down as a merit of aristocratic

government that it tends to bring forward genius and encourage attainments in various branches of human enterprise—not merely political talents, but those connected with the arts and with letters. The tendency of a democratic republic is to let talents be brought into action by the stimulus which it gives to all men, and the opportunity which it affords to all classes, of rising to eminence equally. The aristocratic government throws insuperable obstacles in the way of political, and many in the way of judicial and of military capacity. But it encourages all genius in the arts and in letters. The democratic constitution encourages talents also in those departments, but the aristocratic fosters genius of a higher order by the more refined and exalted taste which it produces and diffuses. The Italian aristocracies afforded the most celebrated examples of this merit, and the influence remains manifest to our day in the imperishable works of the fifteenth and sixteenth centuries. In this merit the aristocratic materially excels the monarchical constitution.

5. Akin to this is the excitement and preservation of the spirit or principle of personal honour. No government so manifestly excels in fostering this high sentiment as the aristocratic; and an aristocracy, whether the sole ruler or bearing its share of rule in a mixed monarchy, is remarkable for its beneficial influence in this important particular. The manner in which it thus acts is obvious. Men who belong to a limited and privileged body are under the constant and jealous superintendence of all their fellows, strict in preserving pure the honour of the whole class, and resolved that no one baseness shall be suffered to tarnish it. They feel much less repugnance to crimes, however hurtful to the community, which imply no personal degradation, and feel no repugnance at all to crimes of fraud and perfidy as well as of cruelty committed by the whole order for its own interests. But they will suffer none of their class to incur degradation whereby the body may suffer without its interests being at all furthered. In a democracy no such sentiments have any necessary place, nor have they in an absolute monarchy uncombined with aristocratic institutions. In the former, stern virtue is held in high esteem, and any breach of the law, or disregard of moral obligation, is regarded with aversion. But the delicate sense of personal honour is lightly valued; and a coarseness of manners and want of all refinement accompanies

a more rigid conformity to the laws and more strict regard to moral duties. The sacrifice of all considerations in a pure aristocracy to the honour of the ruling order is exemplified by what Father Paul lays down as a clear duty in his '*Opinione per il perpetuo Dominio di Venezia.*' "If," says he, "a noble injure a plebeian, justify him by all possible means; but should that be found quite impossible, punish him more in appearance than in reality. If a plebeian insult a noble, punish him with the greatest severity, that the commonalty may know how perilous it is to insult a noble."

6. It is certain that the existence of an aristocratic body in any state, whether it be mixed with monarchy or with democracy, greatly tends to promote order, and to facilitate the administration of affairs, by aiding the magistrate in maintaining subordination. The manner in which a gradation of ranks produces this important effect is obvious; equally obvious are the evils which necessarily arise from the want of such a controlling influence—an influence ever superseding the more harsh appeal to the direct force of the executive power. We shall find abundant proofs of this when we come to examine the American and other democracies. At present we may only remark, that a very great error has been committed in our remaining colonies, those of North America especially, in not introducing into their system an aristocratic body. The plan of Lord Grenville in 1791 (for his it was) contained the groundwork of such an addition; but it has never been built upon.

CHAPTER VII.

OF THE FEUDAL ARISTOCRACY.

Individual influence in Aristocracies—Partial delegation of supreme power—Feudal and Civic Nobility in Italy—Polish Aristocracy—Operation of Feudal Aristocracy on Government—Illustration of Feudal Aristocracy from English History—Monkish Historians—William of Malmesbury—William of Newberry—Matthew Paris—Roger Hoveden—Henry of Huntingdon.

WE have hitherto treated of the aristocratic government, in which a select body of hereditary nobles exercise the supreme power, to the exclusion of all others, and in which each member of that body, possessing the same privileges with his fellows, only has by law the portion of power that falls to his share as one of the ruling order. But no such scheme of polity can exist for any considerable time without these individuals acquiring personal weight and influence, not merely with their colleagues, but over the subject-classes; and this will vary in different individuals according to their wealth, their descent from eminent persons, the services they have rendered, the capacity they possess, in short, according to the distribution of the natural aristocracy, which has already been treated of at large. The power of an aristocratic government therefore must always consist, not merely of the supreme or corporate power vested in the ruling body and exercised by its majority, but also of the influence and authority possessed by its individual members in common with all other eminent members of the community, though greater in them, as belonging to the ruling body.

It may, however, well happen that the institutions of the country vest direct influence in the individual members of the patrician body, and that they thus possess individually an authority and personal weight beyond that which the natural aristocracy would give them, and beyond that which the individuals of the subject-classes derive from equal wealth, descent, talents, or services. Not only

may they be protected in their persons from legal process to which others are amenable, as for debt, subjected to different jurisdiction for offences, endowed with titles of honour, distinguished by precedence in rank while not exercising their political functions, exclusively eligible to fill important offices—all of which prerogatives are almost inseparable from their position as members of the governing body; but they may have attached to their possessions, or even to their persons, rights of a valuable nature, and tending to bestow much individual authority. They may have the exclusive power of being followed by trains of retainers; exemptions or other privileges may be attached to those retainers; their property may be exempt from burdens to which others are subject; they may have direct authority over their retainers, and over all who dwell upon their property; they may have judicial, and they may have military power over their dependants; in a word, the supreme power of the state may to a certain extent be delegated to them, subordinate to the ruling body indeed, but supreme as regards their inferiors. We have already shown at great length how the scheme of polity, which grew up all over Western Europe after the dissolution of the Roman Empire by the inroads of the northern nations, created a class of privileged persons, whose individual power was connected with the possession of land, and who exercised over those to whom portions of their land were given upon certain conditions, an authority much greater and more constantly effectual than any which the sovereign could exercise over themselves. The sovereign power in such a state may either be held by an individual, as in the feudal monarchies, or by a body, as in the feudal aristocracies of the middle ages. But in either case the barons, the noble landowners, or holders of noble fiefs, form a peculiar body, whose powers are not exercised by the whole as a corporation, but by each chief in his own district.

According to the principles of the Feudal System all land was held in grant either immediately or mediately from the prince. He was the over-lord of all, and no one could hold any real property except as rendering him service and owing him allegiance in respect of it. All sub-tenants held of their immediate lords in the same manner. Therefore, when an aristocratic government sprung up, or a democratic, in the Italian states, it was among the nobles who held of the Emperor, the common

lord paramount, or among the citizens of the towns who had grown into importance and acquired privileges, or it was among the vassals of the great feudatories—the princes subordinate to the Emperor; but in all cases of feudal nobility there was an over-lord, and no nobles held their lands of any corporation, or of any aristocratic body, even where those corporate or aristocratic bodies had thrown off the Imperial yoke and obtained the supreme power in the commonwealth. The feudal nobles often inclined towards their liege lord in the contest between him and the towns; but they generally endeavoured to maintain a substantive power in their own body, and to resist the encroachments of the civic nobility. They in every case failed sooner or later, and were at length obliged to enrol themselves in the civic companies, in order to protect themselves from the encroachments of the popular body, or of the city aristocracy, and in order to obtain their share of the political power set up in defiance of the Emperor. But whether they united in this manner with the citizens, or retained their separate condition, they exercised great individual influence, from their possessions and the numbers of their adherents. In all the Italian towns, as we shall hereafter find, they had their houses fortified like castles, and they exerted their individual influence by levying bodies of armed adherents, with whom they waged war against one another, to the great disturbance of the public peace, and often to the subversion of the established government. The part of Italy where the feudal nobility exercised most power was in the states afterwards possessed by Venice on the mainland. The nature of the ground contributed much to produce this effect. The hilly or strong country extended in those parts to no great distance from the towns, so that the fastnesses of the barons were near the scene of action, and afforded them strongholds from whence they could sally at the head of their followers, and to which they could always retreat. Under shelter of those castles their retainers could hold out against the burgher militia.

Poland affords another and a remarkable example of feudal aristocracy—in some respects the most remarkable of any. The government was not a pure aristocracy, because the crown, though elective, was conferred for life, and had some considerable share of authority down to the first partition in 1772, after which it became nearly as nominal as that of the Doge at Venice;

but at all former periods the effectual powers of legislation and the most important executive functions were possessed by the nobles, while those nobles excluded the people at large from all share whatever in the government, and each noble possessed more or less of feudal authority and privileges, in proportion to the extent of his demesnes and the number of his vassals.

The tendency of the individual power possessed by the nobles of any country to support the aristocratic government established in it is by no means certain, and is evidently not unmixed with a tendency of the opposite kind. If, indeed, the force of the law be complete, and no individual can either violate its provisions or act against the interests and security of the whole body, whatever influence each member has over his retainers must contribute to the strength of the government. But this supposes not only a complete efficacy in the law to prevent all sedition and conspiracy—it supposes also an entire absence of party and its combinations, and this we have found to be peculiarly difficult to conceive in an aristocratic constitution. Now as soon as such combinations exist it is manifest that the greatest mischiefs both to the peace of society and to the stability of the government must arise from the power of individual nobles, and little less than anarchy can be expected to prevail in a community so constituted. The whole history of the Italian commonwealths, and much of the Polish history, is one continued scene of the faction, confusion, and civil war arising from the power of individual nobles. In Italy their fortified houses, or castles, were the theatres of regular sieges. Their bands of followers, acknowledging no law but the will of their chief, carried on war against each other as if they were the subjects of separate and independent princes. The change of ministry, as it would be called in our more quiet days, was the elevation by force of one party to power, and the expulsion of their adversaries, generally attended with the razing to the ground of all their castles, and the massacre of such opponents as did not fly. But no country under the dominion of the feudal aristocracy could be said to possess a regular government. France and Germany were, under their monarchs, as much a prey to civil anarchy as Italy and Poland, except that the aristocratic or democratic power in the smaller commonwealths of the south had even less force than the power of the crown in the north to restrain and

control the turbulence of the barons. We have already examined at such length the nature and effects of the feudal scheme where it prevailed, that it is only necessary the reader should be referred to those chapters of the First Part in which this important subject is discussed (Chap. VIII. IX. X.) But we shall here add an illustration of the state of government and society under the feudal aristocracy in the middle ages; and though it is not taken from the history of the Italian or Polish republics, but from that of England, exactly the same state of things must have prevailed among them, only that their annalists have given us less minute information respecting its details. The subject is also curious, as illustrating our own early history, and showing, if any proof of that were wanting, the folly of those ignorant and unreflecting persons among ourselves who are fond of bidding us look to the more ancient periods of our government for the perfection of the English constitution. The period to which we shall now refer was immediately preceding the reign of King John, and the granting of the great Charter; and that important act being on all hands admitted to have been merely declaratory, all the praises lavished on the original form of our polity must be understood as being applicable to the reign of King Stephen, of which we are now about to speak.

The Monkish Histories certainly may be relied on for the general descriptions which they give of the state of the country, unless in those instances with which ecclesiastical controversies and the interests of the church are concerned; and, above all, they may be trusted as not exaggerating in their accounts of enormities committed by prelates or other churchmen, as well as by lay barons.

William of Malmesbury flourished in the worst of the times which he describes, about the middle of the twelfth century. His work is dedicated to Robert of Gloucester, son of Henry II. The following is his account of the year 1140:—

“ The whole of this year was defaced by the horrors of civil war. Castles were everywhere fortified throughout the whole of England, each sheltering its own district, nay rather, to speak more correctly, laying it waste. The soldiery issuing forth from them carried off the sheep and cattle, not sparing even the churches or the cemeteries. The houses of the wretched peasantry were stripped of everything to their very straw thatch,

and the inhabitants bound and flung into prison. Many of them breathed their last in the tortures which were inflicted on them in order to force them to ransom themselves. Nor could even bishops and monks pass in safety from town to town. Numbers of Flenings and Bretons, accustomed to live by plunder, flocked to England to share the general booty."—(*Will. Malm.*, 185.)

"Such," says the author of *Gesta Regis Stephani*, 961, "such was the doleful aspect of our miseries, such the most dishonouring form of the sordid tragedy (*quæstuosæ tragediæ inhonestissimus modus*) everywhere openly exhibited in England. Prelates themselves," he adds, "shameful to tell, not indeed all of them, but very many, or a great proportion of the whole (*non tamen omnes, sed plurimi ex omnibus*), armed and fully appointed, and mounted, did not scruple to join the haughty spoilers of the country, to partake of the plunder, and putting to the torture, or casting into dungeons, whatever soldiers they took, and imputing to their soldiery all the outrages of which they were themselves the authors. And to say nothing of the others (for it would be indecent to blame all alike), the principal censure of such impious proceedings fell upon the Bishops of Winchester, Chester, and Lincoln, as more intent than the rest upon such evil courses."—(*Lib. ii.* p. 962.)

The treatment which the crown met with from the barons is thus described by William of Malmesbury, speaking of the year 1138:—"Their demands from the king had no end: some would ask lands, some castles; in short, whatever they had a mind to, that they must have. If ever he delayed granting their requests, straightway they became incensed and fortified their castles against him, plundering his lands to an enormous amount. The king's profusion never could satisfy them; the earls who had not already been endowed with crown lands rose against him; they became more greedy in their demands, and he more lavish in his grants."—(*Lib. i.*)

William of Newbury informs us that "he, the least of the saints of Christ, was first born unto death in the first year of Stephen's reign, and again born unto life in the second year." To describe the anarchy which prevailed he cites the text—"In these days was no king in Israel, but every one did as seemed good in his eyes." Neither the king nor the Empress Maude had any real power.—"The animosities of the contending pro-

vincial nobles waxing hot, castles had arisen in every part of the country from the fury of the conflicting factions, and there were in England as many kings, or rather tyrants, as there were owners of castles—each having power of life and death, and of administering justice to their subjects like so many sovereigns.” —“ Thus,” he afterwards says, “ by contending against each other with long-established mutual hatred, they so wasted with rapine and fire the fairest regions, that in a country once most fertile almost all power of growing grain was destroyed.”—(Lib. i., cap. xxiii.)

Matthew Paris lived a century later, but he gives the same account of those dreadful times; the same picture of a wretched country, abandoned to the rule of local tyrants, the intolerable yoke of a feudal aristocracy; but flourishing as our romance writers will always have it under the sway of chivalrous barons, the paternal rule of mighty chiefs who revelled in their halls, led forth gallant hosts to do deeds of arms, and while they ravaged the country or plundered their neighbouring lords, entertained minstrels to sing their deeds and magnify their name.

“ There was no shelter from violence even in the shades of night. Everything was wrapt in slaughter and fire. Shouts, and wailing, and shrieks of horror resounded on every side.” These are the words of Matthew Paris (1139), and Roger Hoveden uses the same language.

At length a treaty was made between Stephen and the Duke of Normandy, afterwards Henry II., the principal article of which was applied to the extinction of this ancient pest. It was agreed that all the castles erected since the time of Henry I. should be pulled down. No one dared to propose any destruction of the old, and, as it were, established strongholds of violence, rapine, and anarchy. A hundred and twenty-six were within the scope of this stipulation. It is however to be observed that the treaty itself, as given in Rymer (*Fœd.* i. 13), contains no such provision; and Henry of Huntingdon says that “ the brightness of the day was overcast in some degree by the meeting of the two princes at Dunstable, where they complained that some of these castles, erected for the worst of purposes, remained still entire, contrary to the treaty, owing, it was said, to the goodnature of Stephen sparing some of his barons.” (398.)

William of Newbury relates how "castles were burnt after the treaty like wax melted in the fire, they having before served as retreats to wicked men and dens of robbers." When Henry II. came to the throne he took care to see the stipulation executed, destroying all the castles built since Henry the First's time, with only a very few exceptions.

Such was the condition of England under the feudal aristocracy; but, no doubt, rendered far more the prey of general anarchy by the evils at the same time afflicting the country of a disputed succession. The consequent weakness of the government, and the incentives to civil war, acted upon the materials of revolt and turbulence which the force individually possessed by the barons collected in every part of the kingdom; and it may fairly be questioned whether in any country pretending to have a regular government, and removed by but a step from barbarism, there ever was seen in the world such a state of things as England presented during the sad period of which we have been surveying the annals, upon the testimony of contemporary and unsuspected witnesses.

CHAPTER VIII.

MIXED ARISTOCRACIES.—POLAND.

Tendency of Aristocracy towards mixed Government—May be really pure when apparently mixed—Examples: Venice, Genoa, Lucca, San Marino—Polish Constitution—Ancient History—Origin of factious spirit—Extinction of all jealousy of Foreign influence—Patriotism of the Czartoriakys—Conduct of neighbouring Powers—The Partition—Nobles strictly an Aristocracy—Their Privileges—Palatines; Castellans; Starostas—Elective Crown—Foreign interference—Diet of Election—Royal Prerogative—Change in 1773—Senate—Its Constitution and functions—Chamber of Nuncios—Functions of the Diet—Absurdities in its Constitution—Prophylactic power and *Via Medicatrix* in Governments—Mitigating devices in the Polish Constitution—Administration of Justice—Defect in the English similar to one in the Polish Government—Military System—Character and habits of the Nobles—Prince Czartoriak.

WE have already seen that an aristocracy may be easily combined so as to form part of some other constitution; that its nature even lends itself to such changes and modifications as produce a mixed government; and that accordingly there have been very few instances of purely aristocratic constitutions lasting for any such length of time as monarchies are generally found to endure. Wherever the aristocratic principle enters into any form of government, it brings with it more or less of the consequences which we have seen follow from the establishment of that scheme of polity, more or less in proportion as the principle enters more or less largely into the system. This is manifest.

But it is also clear that a government does not cease to be aristocratic, and may well be so described—it does not become, properly speaking, a mixed government—by the mere addition to the aristocratic body of some other power, too feeble to control it or to share with it the supreme power. Thus the Venetian government, as we shall presently see, was most strictly speaking a pure aristocracy, though nominally at its head was placed a kind of mock chief, a mere shadow of royalty, in the person of the Doge. The like may be said of Genoa during the time that the aristocracy prevailed and excluded the popular in-

fluence. In Lucca and San Marino, the Gonfaloniere, though possessing more authority, could not be said to change the aristocratic or oligarchical frame of the constitution. Neither does the circumstance of the executive power, or rather a portion of it, being conferred by election, make any difference. If that power were substantial and real, if it effectually counteracted the aristocratic influence, then, although conferred by the nobles, if it were bestowed for life, it would make the government a mixed monarchy, and if conferred by the people it would be equally monarchical, though the right of election in both instances would tend to give the choosing body—the nobles in the one, and the people in the other—some additional weight in the balance of constitutional power. So the Doge or the Gonfaloniere being elective officers did not make them the less monarchical: it was their insignificant authority, their impotency to control the aristocracy, that made their weight as dust in the balance of the constitution.

The two countries in the constitution of which the principle of aristocracy has entered most largely are Poland and Hungary. In both of these the government might be truly termed mixed, because the sovereign, elective in the one and hereditary in the other,* possessed considerable power, although the root of the monarchy, especially of the Polish monarchy, was planted in the patrician body. In both, too, there was a large addition to the influence of the crown from foreign influence: in Poland, from the unjust, unconstitutional, and illegal interference of foreign powers; in Hungary, from the crown being for ages worn by the Austrian monarch, and from the consequent prevalence of all the disturbing forces which we have seen belong to the imperfect federal system.—We shall now examine these two constitutions, as affording full illustrations of the aristocratic principle, while we proceed to treat in detail of ancient and modern aristocracies.

The kingdom, or the republic of Poland, for it has gone by both names, was, before its partition had been effected by one of the most detestable national crimes that human ambition ever committed, among the most extensive and important states of Europe. Its surface stretched over nearly 250,000 square miles ;

* The crown was originally hereditary in Poland, and elective in Hungary.

its population exceeded twenty millions; * its productions, vegetable and mineral, were rich and various; its rivers gave easy vent to its produce, though it possessed little seacoast; and its position in the centre of Europe gave it a natural influence over the neighbouring states.

The feudal polity prevailed here as over the greater portion of Europe to the south of the Baltic Sea, although it was not reduced to so regular a system as in most of the other countries. The division of the land was more unequal; but there were no great fiefs as in France and Italy. The sovereign had, as everywhere, in theory a very limited prerogative, in practice still less authority; and the barons had extensive powers over their vassals, and an overruling influence in the government. As there were no great feudatories dividing the country into so many principalities, governing each in a kind of federacy under the common superior, there was no difference between the legal privileges and rights of the numerous barons or landowners. The more wealthy, those who possessed the largest estates, had, of course, most influence; but all were recognised as the ruling order, and, together with the sovereign, and much more than the sovereign, carried on the administration of affairs.

The sovereign was nominally elective; but as soon as one powerful family had obtained the crown, they had sufficient influence to transmit it, by making the election fall upon some one of their number, on each successive vacancy. Thus the Jagellons, descended from Jagellon, Duke of Lithuania, uniting that duchy with Poland in 1385, on his marriage with Hedwige of Anjou, the Polish queen, continued to reign till 1572; and the Piast race, from which Hedwige had sprung, was on the Polish throne in the tenth century, and before the introduction of Christianity. The nobles chose one Piast after another for successive ages; and it was not till the Jagellon dynasty, which had reigned for two centuries, became extinct, upon the death of Sigismund Augustus in 1572, that the elective system, the cause of all the evils which afterwards befell the country, became, after the succession of three Vasas, completely established in substance as well as in name.

The first struggle, however, to which this wretched system

* This includes Lithuania, the extent of which was 120,000 square miles, and the population nearly six millions.

gave rise, was productive of considerable benefit to the nation. The "*Confederation of Poland*," as it was ever after called and almost ever respected, decreed that all distinction of political privileges on account of religious differences should cease, and that every sect should enjoy the same civil rights. This great event happened in 1573; Henry of Valois was elected king, and soon after resigned the throne, when he became Henry III. of France on the death of Charles IX. The factious spirit which an aristocracy, governing with an elective king, engendered and spread over the whole community, soon took such entire possession of all men, that no animosity was felt towards any foreign enemy; no jealousy was entertained of any foreign interference; no precautions were taken against any foreign aggression. The two most formidable neighbours of the republic were certainly Austria and Muscovy. In 1586 the czar, Feodor Ivanovitch, was very near being elected; and Maximilian of Austria was actually chosen king. It is true he had a competitor, whom his own party also elected; but it was another foreign prince and a powerful neighbour, though less formidable than the other two, Sigismund Vasa of Sweden. A civil war, combined with a foreign, ensued from this double choice: Maximilian was defeated by John Zamoyski and taken prisoner; and Sigismund, though he lost his hereditary kingdom of Sweden, reigned nearly half a century in Poland—ruining the country by his weakness, and oppressing it by his bigotry, which led him secretly to violate the Confederation, though he dared not openly to act against its salutary provisions. The spirit of faction joined with his misgovernment to make his reign a long anarchy; but the wise government of his two sons, who were fortunately chosen after him, especially the second, John Cassimir, did much to restore the public prosperity.

The great nobles, or magnates, had hitherto the chief share both in the government of the country and the election of the king. The lesser nobles could, by combining against them, dispose of the election, though they could never long retain a permanent influence in the government from the inevitable effects of the natural aristocracy. In 1668 their combination obtained the election of Michael John Sobieski. At his decease the House of Saxony, through Russian influence, obtained the crown, which they held through the same support from 1690 to 1763.

Now began the glorious efforts of the Czartoriskys, the most noble and virtuous of the great houses of Europe ; efforts which have been nobly persevered in ever since, and which have ended in the voluntary destruction of that self-devoted family of illustrious patriots. Endowed with such ample possessions that their quota to the levy in times of peril was not less than 20,000 armed men ; descended from the Jagellons ; allied by marriage with all the other great families of the realm, and with many of the royal houses of Western Europe ; yet more revered for their virtues and their patriotism than respected for their power, they endeavoured to bring about those essential reforms in the constitution which the sad experience of past times had proved to be so eminently wanted. But Russia and her tools, the Saxon party, resisted all change ; and although she was during the Empress Elizabeth's reign most unexpectedly and most unaccountably gained over to the liberal interest, the Saxons now obtained the aid and countenance of France, which put herself at the head of that party called the republican, because they maintained the supreme power of the nobility and opposed all salutary reform, and among others the formation of a vigorous executive. Nevertheless the Russian influence joined to that of the patriots under the Czartoriskys succeeded in strengthening the power of the crown, restricting that of the nobles, and above all placing bounds to the exercise of the veto, the great flaw in the system, and which made an impossibility, the unanimous concurrence of the diet, an indispensable requisite to all legislative acts. Under the same influence Poniatowski was chosen king in 1764, on the decease of Augustus III. of Saxony ; and there appeared for a while the dawn of brighter days for Poland. Soon, however, the inherent vice of the system, the interference of foreign influence, again broke out, and Russia found that her preponderance was gone if the reforms lately effected were suffered to be maintained. In less than two years the veto was restored, the crown's power reduced to its former crippled state, and the formal guarantee of Russia interposed to the existing constitution—in other words, to the perpetuation of those abuses and that anarchy which rendered the whole administration dependent upon her own pleasure, and made the Russian Ambassador ruler of the country.

The fruits of the vile tree thus again planted and thus nur-

tured were soon gathered by the hands that had cherished it. In 1772 a portion of the country containing five millions of inhabitants was seized on, without the shadow of a pretext, by its three most powerful neighbours, Russia leading the way in this great pillage, and receiving the lion's share of the spoil. In 1791 the progress of liberty and of free opinions, accelerated by the French revolution, gave birth to a vigorous effort in behalf of Polish reform. The constitutional diet, on the 3rd of May in that year, promulgated a new constitution, framed on the model of our own, and to the merits of which Mr. Burke himself bore a generous, though perhaps not a very willing, testimony. Had it not contained the two cardinal defects—first, of being somewhat too much in advance of the age, finding the people with their aristocratic regimen unprepared for its provisions; and next, of making no effectual provision for raising a sufficient national force—there is great reason to believe that, in the critical position of European affairs in which it was launched, it might have survived to bless the country with a regular and orderly government, and to secure its independence from foreign aggression. But the spoiler was at hand: the partitioning powers suddenly took the field; they wasted the country and besieged the towns; after massacres, of which there is no other example in the modern warfare of European nations, they overturned the new constitution, and, as the price of their interference, divided among themselves half of what their former crimes had left nominally independent. Two years later the final blow was struck, and, after a desperate struggle under the gallant Kosciuszko, they erased this ancient kingdom from the map of Europe.

We are now to view more nearly the structure of this bad government; the worst, without any exception, that has ever been established for any length of time in any part of the world—the one which most signally, most constantly, and most inevitably failed to bestow upon its subjects the benefit that all government is formed to dispense—internal tranquillity and security from foreign aggression. Whatever we have already seen of misfortune befalling the country, whatever we are yet to observe of tumult and anarchy in the administration of its affairs, all proceeded directly from this fruitful source of public calamity.

The chief power of the state, although not the supreme or the sole power, was lodged in the patrician body. Every noble

had an equal voice in exercising the functions of the government, and he used it by voting for the election of representatives, called *nuncios*, that is, delegates or ambassadors to the chamber of nuncios in the *diet*, or supreme legislative assembly. The choice was made at provincial assemblies, or lesser diets, called *dietines*. The rights and condition of nobility could only be conferred by the united voice of the three states composing the diet, namely, the king, the senate, and the nuncios; consequently the body was strictly an aristocracy (Chap. 1. Part 11.), all the family of each noble having its privileges by inheritance, and no person having the power of entering into the body without its own consent expressly given. The dietines decided all claims of nobility, on the production of the claimant's title or letters of nobility; and the severest penalties were denounced against any one who should presume unauthorised to usurp the rank, or to prefer false or fictitious claims: he might even be put to death by any noble summarily and without trial. The rank was not lost by intermarriage with persons of an inferior class; consequently the claimant had only to prove his noble male descent; but three generations of descent must have elapsed before the privileges could be fully enjoyed, unless in extraordinary cases of public service. The noble thus descended and thus entitled was termed *Scartabel* (quasi *Bellus ex Charta*). The rights of nobility were forfeited by crimes and by following a degrading trade; but menial service, even in the house of a foreigner, did not forfeit; it only suspended the right of voting during the servitude.

Beside the elective franchise, the Polish noble enjoyed other immunities of an extraordinary kind. He alone could hold landed property. He had a right to all mines and minerals, including salt mines, on his lands, commoners being excluded from such rights entirely. He exercised jurisdiction over his peasants or vassals, even to the extent of life and death. His house was an asylum, giving refuge from arrest to all malefactors and all debtors, though he became in some sort answerable if he shielded any. His own person was sacred, and he could only be arrested upon a judicial conviction of a crime, or if taken in the act. No great office, hardly any other of importance under the crown, could be held but by a noble; and these were of high pecuniary value as well as power and in-

fluence. The chief were *palatinates*, *castellanies*, and *starosties*. The palatines were governors of provinces and chiefs of the nobles within their respective bounds, heading them when called out on great emergencies, in the *pospolite*, *arrière-ban*, or *levy en masse*, and also commanding them in war. The castellans, originally the lieutenants of the palatines, became afterwards invested with equal powers, only in smaller districts. The palatinates and castellanies were rather offices of honour and influence than of profit; but the starosties were exceedingly valuable in point of emolument. They were attached to the lands originally domains of the crown, and no one could hold a starosty without possessing some portion of this land. They were a species of government, and many of them had civil and criminal jurisdiction. The income amounted in some to as much as 2500*l.* a-year. They were, like the palatinates and castellanies, conferred by the crown; and without the royal assent did not go to the widow or heirs: but this assent was rarely withheld; so that they became almost hereditary, like the offices in the other feudal monarchies. There were in the whole kingdom, including the grand duchy of Lithuania, no less than 452 starosties. The crown had besides a vast number of villages, which were generally granted for life, with all their rents and emoluments.

The king was elected by the whole body of the nobility, thus constituted and thus richly endowed. The primate, Archbishop of Gnesen, was viceroy or interrex during an interregnum after a sovereign's decease, abdication, or deposition; and in case that see was vacant, the Bishop of Cuiavia. All the ordinary administration of justice was suspended, only extraordinary counsellors were appointed to dispose of criminals, and generals to guard the frontier; but so feeble were the national forces, that foreign princes almost always marched their troops into the country as soon as an election approached. The foreign ministers were formally desired to quit the capital, that the choice might be the more free; but they as regularly refused to go. Thus a Russian ambassador answered the requisition by observing that he had been sent to reside in Warsaw, and not in the country. An Austrian envoy said on the like occasion, that, if he went, he was sure his master would order the Silesian regiments to escort him back.

The Diet of Election began its discussions with a statement of grievances, called exorbitances or complaints of the infractions of the constitution during the late reign, and, after resolving to exact some new concession from the new king, they proceeded to choose him. The Deputies who were sent from the various dietaries, amounting in number to about 150 nuncios, and called *Rota Equestris*, occupied an enclosed space. They conducted the whole deliberations; but they were liable to be changed during the process at the will of their constituents, who, as the last of all the absurdities in which this constitution abounded, attended in person, and partook fully in the vote elective of the crown, though not in the deliberations on grievances. The whole nobles marched upon Warsaw by various routes forth from their castles at the head of their retainers and dependants, all but the poorer class mounted, and all without any exception armed. As many as 130,000, frequently more, occasionally even 200,000, were thus assembled. Arriving at the scene of the operations, the elective operations, the great plain of Vola near the capital, they occupied the ground around the enclosure of the Nuncios, and there encamped, during the six weeks that the Election Diet lasted by law. During this period of interregnum the republic was termed "*most serene*," and assuredly a title of honour less expressive of the fact never was invented or bestowed by the overweening caprice of princes, prone to fancy that they could endue their favourites with the qualities which they named them by, than this appellation assumed by the aristocratic republic to describe its own state while exercising uncontrolled power.

The sovereign thus named, unless when the election was brought about by foreign armies or foreign gold, generally had to fight for his crown. Having in one or the other way secured the possession of it, his prerogatives were so far from being the shadow of monarchy, like those of the Italian doges, that they really gave great influence, and entitled the political philosopher very correctly to term the constitution a mixed aristocracy. He enjoyed a considerable revenue, above 60,000*l.* a-year for his personal expenses; named to all the great offices, of which there were forty-eight, but ten, of the highest, having places in the senate as well as in the council of state; appointed all military officers; had the exclusive patronage of all the seventeen bishop-

rics and of all the greater livings; gave away the vacant starosties, and gave or refused the succession of deceased starosts to their families; granted privileges to towns, so however that these interfered not with the rights of the nobles; distributed orders of knighthood; and bestowed titles of nobility on foreigners, who however obtained from thence no rights or privileges.* He received foreign ministers, but in the presence of the council; and though he could appoint ambassadors to represent the republic, they could neither make alliances, nor treat of peace and war. It was among the many vices and absurd anomalies of this vile constitution that the generals and ministers named by the crown held their places irremovably, until they either consented to retire or were sentenced by the Diet. Finally, he had the nomination of the senate, of which body we are now to speak. But the senators, like the generals and ministers, held their places independent of the crown.

The number of the senate was 136, of whom seventeen were prelates. Beside these 136, the ten great officers of state had seats in the senate, and of course possessed more influence than any of the other members. The senators had constant access to the king's person, and four of them were required to be always near him. Without their presence he could do no act of state; and this contrivance to maintain a watch over the crown on the part of the aristocracy manifestly resembles what we shall find to have been practised at Genoa and at Venice with a similar view. No senator could quit the country without express leave of the Diet.

The functions of the senate were to preserve peace and union among the various provinces or the palatinates and castellanies; and to assist at the diet, of which, in its legislative capacity, the senate formed an integral part. Its consent was required for the making of any law, and the taking of any resolution of the diet, as much as that of the king and the Chamber of Nuncios. The senate could only be convoked by the king, unless in the

* We have made no mention in the text of the change which was effected in 1773, after the first partition, because we are here giving an account of the old constitution while Poland was entire. That change really reduced the regal authority almost to a shadow: it was the nomination by the Diet of councillors, without whose consent no act of the Crown could be performed. This was copied from the constitution of Venice, as we shall presently see.

event of any illegal proceedings taken by him, in which case the primate might call a meeting. If the primate refused in such an emergency, the nobles could assemble it.

The nobles were represented in the Chamber of Nuncios, chosen as we have seen by the dietines of the provinces, all of which were to hold their meetings the same day, except two, Zata and Holitz, which met a week earlier. The number of nuncios was 168, provided the electors in each of the sixty-four districts were unanimous; for unanimity was required in dietines as well as diets; but Prussia Royal had a right to send 100 representatives of its nobility. The same absurdity which prevailed at the election diet was also found to exist in the ordinary meetings of the nuncios; for, under the name of arbiters, all the nobles claimed a right to attend the meetings of their representatives, and even to interpose their opposition and protest to the choice of the marshal or president of the chamber. This, however, was not peremptory, but only led to inquiry.

Every function of the government not performed by the king alone was performed by the Diet. They only could make laws, determine questions of peace, war, or alliance, levy taxes, raise troops, coin money, confer nobility, and naturalize foreigners. But in all their proceedings the grand and revolting anomaly was introduced, which has obtained the expressive and descriptive name of the *Liberum Veto*, only that this is not generally understood in the full extent of its absurdity. Not only was absolute unanimity required to give any vote force and effect; but if any one of the many parts or chapters of a law, or of any one law of the many discussed at a diet, was rejected, the whole legislation of that diet fell to the ground. It was necessary to adopt all or to reject all. Surely no human contrivance was ever devised so effectual to tie up the will and paralyse the judgment of any deliberative assembly. Add to this, that the duration of the diet was fixed by law—it must expire in six weeks, and even at the hour striking, whatever subject of consideration might then be before it.

When any gross absurdity has for any reason found its way into the frame of a government, there seems to be called forth a protective or prophylactic power in the system, analogous to that by which the natural body throws off any noxious or any extraneous matter introduced into it; and if mischief cannot be

prevented, then is exerted another power like the *vis medicatrix* of the natural frame—a power of making some secondary provision which may counteract the mischievous effects of the malconformation, and enable the machine to go on working, which otherwise must be stopped or destroyed. We shall find examples of this truth in the ancient as well as modern republics of the south; and Poland affords one as applicable to the grievous vices of its political system which we have just been describing. The king had the power of convoking extraordinary diets upon emergencies, but these could only last three weeks. However, when a diet had failed of coming to any useful decision, in consequence of the veto, a majority of the chambers might, with the assent of the crown, turn the diet into a *Confederation*. This usually took place on the emergency of some threatened invasion, or other public danger. If without the royal assent the confederation took place, it was called *Rokosz*. Sometimes even when the confederation was regular, being authorised by the crown, always in the case of a *Rokosz*, there were *re-confederations* or *anti-confederations*, which at once led to a civil war. The king had the power likewise of convoking a *Senatus Concilium*, or senate deliberating under his presidency; but its decrees only had the force of law temporarily, and required to be confirmed by the diet. Another kind of confederation was the *Zwyzek* or *Military Zwyzek*, and this was another name for a military revolt. After every kind of confederation it was usual to hold a diet of pacification, in which the intention and the name alone were of value.

The administration of justice was upon a footing nearly as singular and of a description quite as imperfect as any other branch of the Polish constitution. The king continued much later than in any other country of Europe to hold the judicial power in his own hands. Until late in the sixteenth century he was the sole judge of important cases, as well criminal as civil; and he went round the kingdom to exercise this high office, with his numerous suite, all of whom were maintained at the public cost in each district that they visited. This labour, so alien to a modern prince's habits, made Henry III. say, "Faith, these Poles have only made a judge of me, and soon they will make an advocate." His successor, Stephen Battori, created regular courts, reserving to himself the greater causes only. In

the reign of the succeeding princes the nobles and the clergy obtained the judicial power, and this weakened exceedingly the influence of the crown, without materially improving the administration of justice. The want of any provision for the prosecution of offences was a serious imperfection, though not confined to Poland; and the maxim became established, and as rooted as it was pernicious—" *Nemine instigante, reus absolvitur.*" It is only by a variety of accidental circumstances concurring to counteract the evil in our own system, that a similar defect has not ended in paralysing the whole execution of our criminal law; and the mischiefs that daily arise from it are very grievous, notwithstanding the partial remedy which these circumstances have applied.

But the manner of appointing the Polish judges was as bad as possible. They who composed the higher tribunals were elected at the several dietines by the nobles, and at the chapters by the superior clergy. The places of these judges were lucrative, gave great influence, and were eagerly sought after by the nobles; and their persons were sacred, so that the least injury or insult offered them was punished with death. They had cognizance of all crimes, treason and peculation excepted, subject to appeal. The diet was the court of review, and had original jurisdiction of treason and peculation.

The military state of the country was not better than its civil. There was no army that could be relied on when wanted, any more than in the other feudal kingdoms, while the armed state of the nobles and their high privileges almost exempting them from the control of the law, made the country a prey to the worst form of anarchy, that of a military mob. The nobles did not serve in the infantry, however poor, excepting as officers; and all the cavalry, men as well as officers, were nobles. Each had a right of bringing three servants to attend him, and these were all on a kind of equal footing with their masters. Every noble, private as well as officer, and how needy soever, was admitted to the general's table. The servants were called *pacholiks*: they were all armed, and all took part in the fight. The diet alone could call out the *pospolite* (or levy or *arrière-ban*), and, on its being summoned, all ordinary administration of justice ceased; the king alone and the senate exercised judicial functions, and martial law was administered by military tribunals.

Such was the structure of the Polish constitution: its basis a completely formed and firmly cemented aristocracy, but joined and badly adjusted to a kingly power; and certainly it would not be possible to devise a system less fitted to secure any one of the objects of all government. Bad as it was, and ill as it worked in modern times, and after its principles were settled, in earlier ages it was still more tumultuous and more mischievous, and unavoidably engendered a constant struggle between the nobles and the sovereign, to the utter and habitual neglect of the public interest. Thus it was not till the middle of the fifteenth century that the king's consent was required to the passing of any law, or that the senate was recognized as a body separate from the representatives or nuncios; and when John Albrecht, an able and patriotic prince, at the beginning of the sixteenth century, after in vain attempting to curb the exorbitant power of the nobles, tried many schemes for the general benefit of the country, he was stoutly and successfully resisted in all his endeavours, the aristocracy desiring only to thwart him, and caring nothing at all for the interests of the state, which he was desirous of advancing. In his reign began that constant disposition, much increased in the Saxon reigns, to seek foreign aid in their party conflicts, which formed the great stigma on the character of the Poles. No one was jealous of the Czar; all fears were merged in the jealousy of the crown.

The character and the habits of the ruling class were such as it might be expected that uncontrolled power thus distributed among individuals, as well as vested in the body, would form in each of its members. They were fierce, ignorant, haughty, overbearing. The natural talents of the Poles are great; no people have more: they combine the suppleness and quickness that distinguishes the Slavonian race, with far more steadiness and perseverance than ordinarily accompanies these brilliant and attractive qualities; and all the insolence of the nobles was covered over and concealed by a polish of manners almost peculiar to that people. The inequality, however, in the distribution of wealth was extreme; and although each noble, be his condition ever so mean in point of fortune, possessed the full privileges of his order, the wealthy landowner received as much homage from his poorer brethren as from the needy commoners. The power and splendour in which the greater families

lived was not to be matched by anything in more refined countries. The Prince Czartorisky, beside maintaining a multitude of dependents and gentlemen in needy circumstances, had a suite of young nobles who, at his residence, his court, received their education, and became fitted to shine both in that brilliant circle and in the attractive society of Warsaw. The princess was daily seen at Poulawi to take her morning drive attended by twenty gallant cavaliers, rivalling each other in their devoted obeisance, and all but fighting for the honour of handing her from the carriage when she alighted, or picking up her fan when it chanced to fall. The military force of his domains we have already mentioned. It is this lofty position, this brilliant lot, which that great patriot, the present representative of the family, has exchanged for poverty and exile—a lot, however, that he only prized, and now only regrets, as it afforded him the power of serving that country for which he has made so vast and so costly a sacrifice.*

* The works upon Poland are numerous, and some of them possess great merit. There are several in German and in Latin. Of course those in Polish are to foreigners a sealed book. The Chev. D'Eon's *Déscription de la Pologne*, in vol. i. of his *Leçons*, gives the best, and, generally speaking, the most correct account of the constitution. But no one should omit reading the admirable work of Rulhieres (*L'Anarchie de la Pologne*, in 4 vols.), one of the most brilliant and attractive histories that was ever written. Recourse has been had, in preparing this chapter, to original sources of political information.

CHAPTER IX.

MIXED ARISTOCRACIES—HUNGARY.

Lombard Conquest—Magyars—Arpad Family—Feudal circumstances—Nobility—Cardinal and Non-Cardinal privileges—Magnates—Bulla Aurea—Titled Nobles—Diet—Representation; Proxies; Votes—Delegation—Diet's functions—Taxes—Cassa Domestica and Militaris—Count Szechenij—Local County Administration—Congregationes Generales—Municipal Government *Kozsag*; Candidatio—Village Government—Powers of the Crown—Sale of Titles—Peasantry—Urbanium of Maria Theresa—Lords' power; *Robot*—Lords' Courts; reforms in these—New Urbanium; Prince Metternich's reforms—Military System; Insurrectionary Army—Frontier Provinces—Prejudices of Hungarians in favour of their Constitution—Conclusion of the subject.

THE Aristocracy of Hungary never was so firmly established, or endowed with privileges so extensive, as that of Poland; and it is a question much agitated amongst political inquirers, whether or not the Feudal System ever existed in that country. The Lombards, in the year 526, overran the greater part of Hungary; and in the ninth century, the Magyars, a people from Central Asia, obtained possession of it, dividing the lands among their chiefs, and reducing the former inhabitants to a state of slavery. The family of Arpad, their principal leader, held the chief authority until its extinction in 1301. After the lapse of nearly four centuries Austria obtained a footing, and occasionally the supreme power; but it was not till the latter part of the seventeenth century that she received the crown formally, and only since 1711 that she has held it without dispute.

It seems, on the one hand, difficult to deny that the feudal scheme ever found a footing in Hungary; and, on the other, to admit that it was fully established. The servile condition of the cultivators of the soil, the holding of all lands under the crown, the great power of the nobles, their exemption from tribute, the exclusive possession by them of free land, and the annexation of services to the qualified possession, or rather enjoyment, of landed rights by the peasant, as well as the jurisdiction exercised by the lord over the tenant to a considerable extent, all savour strongly of feudality. Indeed, the gifts which the former could exact from the latter on the marriage of his child,

or his own capture in war, were entirely of a feudal aspect and origin; while we must admit that the refinements of the system, and its complete symmetry, had no place among the Hungarians.

The foundation of the whole system, both of the general government and of the local polity of the community, has at all times been the influence and the privileges of the Nobles—originally, as everywhere, a select few, but become, in process of time, a numerous body, and forming now a considerable portion of the whole inhabitants. They amounted to 350,000 a century ago, and may now be estimated at a million and a half, the whole population being not more than nine millions and a half. Of course, in this numerous body there are not many wealthy individuals, and very many in the meanest circumstances: but all of them possess the same rights and exemptions by law; all of them form an artificial aristocracy; and it is the natural aristocracy alone which apportions their relative influence, confining the administration of affairs, the real weight in the state, to such of the class as excel in wealth and other personal or accidental qualities and possessions.

Their privileges are of two kinds, *cardinal* and *non-cardinal*. The most important of the latter are the being exempt from having troops quartered on them, and the right to sell upon their estates certain articles, of which the government has the monopoly elsewhere, and as against all commoners. It is another of these non-cardinal privileges that the nobles alone can possess lands.—The *cardinal* privileges are more valuable and more numerous. The noble holds his land free from all direct taxes, all tithe, and all toll. The only service which he is bound to perform is the attendance upon the levy when the *bann* or *insurrection* is called out on an invasion. His person is sacred; he cannot be arrested until convicted, unless he is taken in the fact; his house, too, cannot be entered on any account by the officers of justice. All fiefs are male, excepting in the district of Arva, where the land goes also to females on the failure of males. In that event elsewhere the fief reverts to the crown. There was till very lately (1835), strictly speaking, no power of selling the land, but recourse was had in consequence to perpetual mortgages; and as these were redeemable on payment of the mortgage-money and all improvements, a double price was generally stated in the contract, great claims for expenditure were made,

and endless litigation ensued. But still the titles to land purchased are very insecure, because all land originally granted by the crown is redeemable within thirty-two years; and this right may, by a legal proceeding (the mere registering of the claim), be kept alive for ever. At twenty-four years of age the son can demand a provision; and on the lord's death an equal division of the land is made, only reserving to the youngest the benefit of a house.—These customs remind the English reader of gavelkind, once the common law of this country, though now confined to Kent; and Borough-English, once the custom of all boroughs, though now only known in a very few places. Where the fief is male, one-fourth goes to females on failure of males when the crown takes the residue. It is another strange privilege of the nobles, that they owe no allegiance to the king before his coronation.

Originally the *Magnates*, or higher nobles, oppressed the inferior, who, combining together, exacted from King Andrew and the higher nobles, in 1222, the great charter, called the *Bulla aurea*, seven years after King John was forced by his barons to grant our *Magna Charta*. The purport of this important concession was to communicate all the privileges of nobility to the whole order; and it was plainly, like our own charter, only a declaration of existing and violated rights. It further declared, that every noble should be subject to the court of the Palatine, excepting in capital cases and causes of forfeiture, which were reserved to the royal jurisdiction. The most remarkable article of the *Bulla aurea* contained, like our own great charter, a stipulation of resistance in case the other provisions should be violated. This article has only been omitted since the year 1687, and that, as is expressed, not from any objection to its substance on the part of the crown, but only to avoid the misconstructions to which it had frequently given rise. The titled nobles are about two hundred families.—We are now to view the system of government which arises out of this aristocracy, and of which this aristocracy is the basis.

The supreme power in the state, by the theory of the constitution, is the Diet or general assembly of the Orders; but there is in practice a wide difference between the rights of the Hungarian and those of the Polish Diet, and the crown has become the preponderating authority, although the diet still retains

considerable powers. It is composed of three great branches, the Prelates, the Magnates, and the Delegates of the inferior nobles and the free towns. The prelates are thirty-six in number, of whom thirty-four are Catholics, and one a Greek bishop, the magnates and the higher clergy, those who have official right to be barons and counts, and the magnates by descent and tenure of land. There are six or seven hundred in all who have a title to sit in this chamber; but, comparatively, few attend, sometimes no more than thirty or forty. The prelates and magnates form one chamber (*Tabula*). The lower chamber is composed of deputies chosen by the forty-six counties, that is, by the inferior and numerous nobility, a million and a half in number, and of whom about 120,000 are supposed actually to vote. The free towns also send deputies; each county sends two. But there is also a singular kind of deputies, who, however, have no right of voting—the proxies of magnates who do not choose to attend in their own chamber, and the proxies of the magnate widows, who of course cannot sit. These proxies resemble what we may recollect to have found in the Sicilian parliaments. (Part I. Chap. XVII.) The deputies of towns are entirely under the influence of the crown; for as the whole expenditure of the revenue is, except for sums less than six pounds, under the absolute control of the sovereign, if any town were to choose a refractory deputy, the sums necessary for repairs and improvements would be left unprovided. This entire subserviency of the town-deputies is the excuse for the nobles having long since taken away their right of voting: they are as mere ciphers as the proxies, and have not more privilege than that of cheering the speakers, and themselves debating, if they please, which however they very rarely do. A single vote was once offered to all the town-deputies collectively; but it was at that time rejected with some indignation. All the deputies, however, are in some sort deprived of deliberative functions, for they are merely the delegates of their constituents, and are so far bound to follow their instructions, that, should they depart from them, and be unable satisfactorily to explain their conduct, they are immediately displaced, and succeeded by more obedient representatives. The lower chamber has a president called *Personalis*. The forty-six counties have ninety-two deputies, but only 46 votes: Croatia has one, Sclavonia three, the free towns one, the chapters one; making in all fifty-four votes.

The crown has alone the power of convoking the Diet; but the law requires it to be assembled once in three years. This, however, has been so little attended to, that only three Diets were convened in the forty years' reign of Maria Theresa; and Joseph II. never called a Diet at all during his ten years' reign. There was no Diet from 1813 to 1825: the Diet of that year lasted two years. Each Diet is a newly-elected body; no prorogation is known; and the same Diet has been known to sit for three or four years. The most extraordinary part of its constitution is the uncertainty which still prevails as to what part of the magnates the right of voting resides in; for the right of created nobles to vote with those by office and estate is so much a matter of dispute, that the Palatine, who has, since the time of Maria Theresa, always been an archduke, and is chosen by the diet from four candidates named by the crown, has frequently been known to reject the determination of an absolute majority as president of the chamber, and to declare a question carried or rejected by the majority of the undisputed votes. The existence of such a doubt clearly indicates either that this branch of the Diet is seldom appealed to, or that its assent is reckoned of comparatively little importance. It is another and a revolting absurdity in the constitution of the Diet, that the nobles, like those of Poland, instead of delegating all powers to their deputies, and suffering them to act for themselves, claim the right of attending in person also; and accordingly they crowd the chamber, taking part by cheering and other interruptions, though they have never claimed the right of speech or of protest, as the Poles have on one important proceeding at least—the choice of the marshal or president. The language spoken in the chamber of magnates is almost always Latin. The policy of the court has been of late years to estrange the Hungarians of high rank from their country, so that they are educated, and generally reside, at Vienna, and are unacquainted with their mother tongue. It is further to be observed, that the upper chamber has only the right of assent or refusal to the resolutions of the lower. No measure whatever can be originated in the chamber of magnates. The two chambers in Hungary, as everywhere else, formerly sat together; their separation, which was as late as 1562, is said to have arisen from the accident of the hall being too small to contain both. In this respect Hungary agrees with the other feudal kingdoms. But it has one custom of great value, and

peculiar to itself. When the chambers (*tabulæ*) differ, recourse is had to what is termed a *mixed sitting*, in which both sit, discuss, and vote together. Hence concession and compromise are more conveniently effected in Hungary than anywhere else, and all collision is avoided.

The Diet's principal function is legislative, that is, by the theory of the constitution ; for the Empress Queen, finding how refractory it was, and how resolved to refuse all grant of privileges to the bulk of the nobles and the peasantry, issued her celebrated edict, the *Urbarium* of 1765, which has been held to have the force of law, though part is enactive, and only part declaratory. The levying of taxes is also in the hands of the Diet, as well as their distribution for collection among the different districts. But in practice this important right seems confined to direct taxation, from which the nobles being exempt, the Diet, their representative, is sure to refuse all such supplies as cannot be raised upon the townsfolk and the peasantry ; and hence the sovereign has introduced a large amount of indirect taxes, which of course fall on the nobles as well as on other classes of consumers. Thus, of the whole revenue, amounting to nearly three millions and a half sterling, no less than two millions are raised by a salt-tax or salt-monopoly, which amounts to the same thing, and 150,000*l.* by customs ; all foreign goods pay sixty-five per cent., and goods from Austria five per cent. The crown-lands yield 120,000*l.*, and the mines 100,000*l.* ; and the direct taxes, falling on the peasants and citizens alone, raise between 500,000 and 600,000*l.* The raising a salt-tax without consent of the Diet has been always held illegal by the Hungarians ; but the imperfect federal system has always made their complaints vain. Had the sovereign no other dominions but Hungary, this impost never could have been levied : his other resources enable him to continue a tax which, though falling equally on the poor and the rich, effectually neutralizes the privilege, so highly prized by the nobles, of being exempt from taxation ; and the tax will assuredly be kept up until, yielding to the voice of reason and justice, the nobles shall consent to bear their share of the public burthens directly imposed.

It is not only in the general taxation of the state that this exemption is claimed by the Hungarian nobles ; they pay none of the local taxes, called the *Cassa Domestica*, in contradistinction

to the *Cassa Militaris*, or those raised by the Diet and the Crown for general purposes. The *Cassa Domestica* is wholly raised by the votes of the county meetings, and it is wholly paid by the commoners or peasants, and townsfolk. But it is wholly administered, as well as wholly imposed, by the nobles alone. Yet out of this money, thus levied on the peasants, are paid not only the expenses of a local kind, as roads and bridges, but the salaries of places which nobles only can hold, including the pay (twelve shillings a-day) of the deputies to the Diet, which has, however, now ceased. The greatest practical reformer of the age, a corresponding member of this Society, Count Szechenij, has carried the point of making them, and for the first time, pay toll or pontage on using the new bridge at Pest. The Diet, but with difficulty, were persuaded to sanction this waiver of privilege—a small step certainly; for the refusal to pay amounted to insisting upon having the benefit of a public work to the expense of which they would not contribute.

The local administration of the counties is twofold, as it resides in the country districts or in the municipalities. The forty-six counties have each its local administration, changing their officers once in three years; and even the execution of the general laws made by the Diet, and of the edicts which the Crown sometimes issues of its own authority, must in all cases be left to the local officers. The Crown names the chief of them or lord lieutenant, called *Fő Ispan*; the others are chosen by the nobles of each county. Among these others the *Alí* or *Vice-Ispan* or *Vice-Comes*, as he is called, has nearly the functions of our vice-comes or sheriff: he is constantly resident, which the lord-lieutenant hardly ever is; he directs the police, and decides small causes, both of debt and breach of the peace. The place is much sought after by the nobles, not so much for the small salary annexed to it of about 80*l.*, as for the influence which it gives, and the practice of public business. The county magistrate, called *Szolgo-Bírok*, is not necessarily a noble. The Crown, in its Lieutenant, has the important right of what is called *Candidatio* in all elections; that is, it names three persons, of whom the nobles choose one. This right, however, is in practice much limited; for the persons of leading influence are almost always selected—that is, such persons as are secure of having powerful support from the electors. The exercise of political functions in their county meet-

ings, and of rights in choosing their magistrates, has tended to give the Hungarians far more political knowledge, by turning their minds to state affairs, than might have been expected from a people whose press is under such strict censorship. Travellers represent them as not only singularly attentive to all passing events, but exceedingly well informed upon political matters generally. Their meetings, however, do not always pass off very quietly: on the contrary, an election is with them the scene, if not of as much corruption, certainly of far more violence than either ours of England, or even those of Ireland. As many as eight persons were lately killed at the *restauration* or election of officers for a single county in one year.

But the county meetings (*congregationes generales*) are of a much higher importance than may, from this statement, at first appear. They are attended by all the nobles and ecclesiastics, and as many as 4,000 persons may be present. Beside directing local matters, they put in force all the decrees of the Diet: by these they are bound; but not by the royal ordinances, which they examine most scrupulously, and if they find anything in such an edict repugnant to the national rights or noble privileges, they have the power of putting it on the shelf (*cum honore deponere*), so that it is no more heard of in that county. Thus each county forms, in some sort, a separate state; and Hungary has been by some deemed a kind of federal monarchy.

The government of the towns is in the hands of a senate and a council, called *Közseg*: these are self-elected. The Senate of Pest consists of twelve, the Council of one hundred and twenty members. There is also a mayor, a judge, and a commissary of police. The three superior officers are annually chosen; the others are for life. In these, as in the county elections, the Crown has the *Candidatio*; but there is a wide difference in its exercise, for the town officers are all, like the town deputies to the Diet, the mere creatures of the government, and for the same reason—the veto of the crown upon all public expenditure; while those of the country are extremely independent, generally speaking.

In the villages, the magistrates are elective; the lord here having the *candidatio*. He has also the monopoly of meat, and wine, in his villages; a right fearfully calculated to produce oppression.

We have now surveyed the privileges of the nobles, the only body of the nation whom the constitution appears to recognise. But in this survey we have incidentally had occasion to see the main points in the position of both the crown and the peasantry or commons. The king has, beside those prerogatives which we have mentioned, the exclusive appointment of all officers, civil, military, and ecclesiastical, except those whose election he shares with the nobles, and except the Palatine, who presides in the Upper Chamber of the Diet, and is chosen by the two Houses. The king also grants the privileges of nobility at his pleasure, except the *Indigenat*, or nobility to foreigners, which can only be conferred by the Diet. All hereditary titles of nobility also flow from the crown. Money is often raised in this manner by the crown, as we may remember we found it to be in France (Part I., Chap. XIII.). The title of Count has generally fetched 5000*l.*; that of Baron 2000*l.* But it is said that an eminent tailor of London, Mr. Stultz, was, probably in consideration of his calling, made to pay 10,000*l.* for being made a Baron. The right of pardoning convicts is also a part of the royal prerogative; and a power still more important than all the rest is possessed by the sovereign—he has the unrestricted control of the expenditure of all public money, whether raised by vote of the Diet, or by edict, as the salt-tax, or proceeding from crown lands and other regalia. No account whatever of this expenditure is ever rendered to the Diet. The coronation oath binds the king, not only to maintain the Constitution inviolate, but also to reunite to the kingdom all the provinces which have ever been lost, as Bosnia, Servia, Wallachia.

The peasants are contradistinguished from the people; the word *populus* being in Hungary, as in ancient Rome, confined to the patrician body, the nobles, clergy, and citizens of free towns. The rest of the community are termed *plebs*, and frequently *plebs misera contribuens*—a singularly significant expression, designating at once the state of the people, and the privilege or exemption, which the nobles chiefly prize. One is here reminded of the French description of the Roturiers, “*gens taillables et corvéables*.” Originally they were astricted to the soil; but in 1405 a law was made suffering them to quit with the lord's leave, which, however, was not to be arbitrarily or capriciously withheld. The language of one of the old laws is

remarkable: it gives protection to the peasantry—" *Ne omnis rusticitas delectur, sine quâ nobilitis parum valet.*" At the beginning of the sixteenth century, their rebellion under Dosa having been quelled, they were reduced again to complete servitude by a law which was repealed in 1547, and re-enacted the year after, and afterwards much modified in 1556.

In the Diet of 1764 Maria Theresa in vain endeavoured to obtain a more favourable law from the nobles; and therefore she issued her famous *Urbarium*, which is partly declaratory, like the *Bulla aurea*, in favour of the inferior nobles; but partly also inactive. The peasant had by this important instrument the free power of leaving his land, provided his debts are paid and there is no criminal charge against him; but his lord cannot remove him. A portion of land was allotted to him of from sixteen to forty acres of arable, and from six to twelve of pasture, with a house and one acre of garden-ground. His money payments were reduced to a mere trifle; and his service or labour, called *Robot*, was fixed at one hundred and four days without his team, fifty-two with it, by one or two days in the week, unless at harvest-time, when it might be doubled. He was, beside this, to render a small amount in kind of poultry or vegetables, and to contribute if the lord were to be ransomed in war, or to have a child married. The power of inflicting corporal punishment was likewise reduced to the bestowing of twenty-five lashes. The obligation of *soc* or grinding at the lord's mill was abolished: the lord's power of taking the peasant's land was confined to the case of his requiring it for building his own house upon, and then he must find other land equally valuable; and the peasant was allowed to take wood in the lord's forest for his needful occasions, a right resembling our *fire and hedgebote*.

One of the greatest grievances which this wise and liberal measure left was the Lord's Court, having jurisdiction of disputes, not only between peasant and peasant, but also between the lord and peasant; the judge being named by the former. The power of inflicting capital punishment is now only possessed by some few lords, or by special grant. Prince Esterhazy is one of those few. The new *Urbarium* of 1835, which does the greatest honour to the eminent statesman so long at the head of the Austrian Councils, removed this cause of complaint. Prince Metternich provided by this edict that the jurisdiction of the Lord's or Manor Court should be confined to causes between

peasant and peasant, and that all questions arising between lord and peasant should be henceforth tried by a new court composed of the district magistrate and four disinterested persons. He abolished all right of inflicting corporal punishment, restricting the Lord's Court to imprisonment for a term not exceeding three days, in case the peasant failed to perform his services. Small tithes and extraordinary gifts were also abolished, and the peasant was not to be compelled to make long journeys with his team in order to do his appointed service for the lord. The noble was made liable to all taxes, local and general, in respect of peasant or ignoble land purchased by him; and in return for such large concessions he only acquired the right of freely devising his land if childless; the right of division among children, if any, remaining; the right to have his share of all the land lying contiguous; and the free right of selling his land. Many nobles compound with their peasants for the robot or labour. Count Szechinij compounds for about one-third of the one hundred and four days, or the fifty-two with team.

The military system of the Hungarian monarchy is singularly inefficient. The insurrectionary army or *levy en masse* on invasion was found wholly useless in 1809, when Napoleon had penetrated to Vienna and occupied Presburgh itself: it was hard to say whether the troops or their accoutrements were the least capable of actual service in the field. Yet the numbers raised were 40,000 men by the counties, and 45,000 by the towns. The military frontier towards Turkey is better provided for defence. This extensive coast, reaching a thousand miles from the Adriatic eastward, and comprising 18,000 square miles of territory, is inhabited by a warlike people, all the peasants being soldiers, and holding their land by a strictly military tenure. Of these, 45,000 are constantly under arms, and their numbers might be raised to 100,000 in case of necessity. The whole system is military. The country is divided into four commanderies, under so many governors, and all the officers exercise both civil and military jurisdiction. The Aulic Council of Vienna regulates the whole. In each family a patriarchal authority resides; the property is in common; the chief, termed *Gospodar*, being the father of the clan, and all the adult males have voices in the management of the common concerns. But this portion of the empire is not properly Hungarian.

Such is the Hungarian Constitution—"the ancient idol of the

nation," as one of their own authors has said; and an idol to whose worship they have sacrificed their country, and made themselves three hundred years behind the rest of Europe in every branch of social improvement. This constitution means, in the mouths of its votaries, the privileges of the nobles, the oppression of the people, the neglect of national prosperity, the sacrifice of real and solid advantages to a nominal glory and empty pride. It is by another of these authors charged as the cause why he deeply grieves to see his countrymen wretched, degenerated, and grovelling in the dust.

The contemplation of the Polish and Hungarian Governments gives rise to constant recollections of the general principles unfolded respecting the Aristocratic system. All the vices of that policy receive exemplification from the effects produced in both countries by the vices which were described as inseparable from its existence. But it would be difficult to trace, in the history of either, any of those redeeming virtues which we found reason to admire in the government of Venice, and of which the Aristocratic principle infuses the influence in mixed constitutions, such as our own, when it forms a part of them, and a part of the greatest value and importance.

We have now examined the general principles which govern the structure and functions of the Aristocratic System, and have illustrated those principles by contemplating the mixed aristocracies of Poland and Hungary. We are now to inquire into the structure and functions of the other Aristocratic Governments in ancient and in modern times, beginning with the government of Rome.*

* The 'Statistica Hungariæ' of Hörvath, 1802, is one of the best works on Hungary.—The 'Travels' of Mr. Paget, 2 vols. 8vo., 1836, contains much valuable information upon all subjects connected with Hungary and the Hungarians.—The works which have been chiefly relied on for information upon the three material points of creation of nobles, inheritance of land, and jurisdiction of nobles, are, Novotny, 'Sciagraphia Hungariæ,' (1798,) Pars I., p. 103—Werbocz, 'Corpus Juris Hungarici,' Pars I., Tit. 3, 4, 6, 7, 8, 40, 47—53, 57; Pars II., Tit. 12; Pars III., Tit. 32—'Decret.' an. 1630, Art. 30; 1435, Art. 2; 1550, Art. 77—Demian, 'Tableau des Royaumes de Hongrie,' &c. (1809) II., 329.—Original information of much value has also been obtained from eminent persons connected with public affairs.

CHAPTER X.

CONSTITUTION OF ROME.

Importance of the subject—Its great difficulty—Ancient historians—Modern writers—Predecessors of Niebuhr—Niebuhr and his school—Scantiness of materials—Character of Niebuhr's writings—Early history entirely fabulous—Illustrations—Early divisions of the People—Early Constitution—The Tribes—Patricians—Plebeians—Patrons—Clients—Comitia Curiata—Niebuhr's doctrine examined—Equites—Reforms of Servius—Centuries and Comitia Centuriata—Legislation of Servius—Comparison with Solon's—Tarquin the Proud—His tyranny—His expulsion—Foundation of the Aristocratic Republic—Fabulous history—Comparison of the Roman Revolution with the French and English.

THE constitution of ancient Rome at the different periods of its history forms a subject of such curious inquiry, and of such useful contemplation to the political student, that we must of necessity examine it attentively, notwithstanding the great obscurity in which a considerable portion of it is involved. Nothing, indeed, can be more difficult than to obtain a distinct and accurate account of its earlier stages; and some parts even of its later history are encumbered with much doubt. The Roman historians all belonged to an age very remote from that in which the foundations of the government were laid. Livy and Dionysius lived in the time of Augustus, seven centuries after the building of the city; four and a half after the establishment of the Commonwealth. The age of Polybius was two centuries nearer the times in question; but his detailed narrative is confined to the transactions of his own day, although our most certain lights upon the earlier times are undoubtedly derived from what has reached us at secondhand of his general summary, and from his incidental remarks. Plutarch, besides that he lived much later—nine centuries after the building of the city—had

been very little in Italy, and possessed an extremely imperfect knowledge of the language. Livy, too, appears to have been deficient in the essential qualities of the historian. He is now universally allowed to have been so careless in examining the evidence of facts which he relates, and so much biassed by a disposition to favour one party and one class of opinions, that he is little entitled to our confidence, and, indeed, only claims our unqualified admiration by the charm of his unrivalled style, which must have placed him at the head of all historians had he but maintained an ordinary reputation for the more cardinal virtues of industry and fidelity.* Dionysius, though he had consulted the authorities much more diligently than Livy, yet evinces no discrimination in the use of them; and having written with the undisguised purpose of flattering the national vanity of his countrymen by representing the Roman origin and institutions as derived from Greece, his fidelity stands very much lower than that of the celebrated Roman author. Besides, neither the one nor the other has described the ancient government with any minuteness; nothing upon the system is to be found in their writings: it is, indeed, by casual observations, or as incidental to the narrative of events, that we find anything like the outline of any of the institutions; and their statements are often at variance both with one another and with themselves.

The uncertainty of the whole early history of Rome had long been well known to all who critically examined it as recorded by those writers, and as referred to in other classical remains. It had not escaped the habitual sagacity and scepticism of Voltaire.†

* The carelessness of Livy, the credulity of Plutarch, and the bad faith of Dionysius, are often complained of. But can anything exceed some of the stories in Valerius Maximus? It seems hardly credible that any respectable person should have set down such things as he has brought together. Thus he relates, as if he were describing an ordinary occurrence, that one of the ten tribunes (twenty-nine years before there were more than five, and fifteen years before there were above two) burnt his nine colleagues alive for preventing a choice of successors—that being a capital offence by a law only made thirty-seven years after—although the historian well knew that neither Livy nor Dionysius, nor any one but the inaccurate Zonaras, had ever made the least allusion to such a tale, and although he also knew that the alleged ground of the massacre is inconsistent with the whole current of events.—(Val. Max., vi. 3, 2.)

† See particularly the Introduction to the *Essai sur les Mœurs*.—Bayle, with all his scepticism, does not appear to have questioned the authenticity of the ancient histories where they relate no miracles; yet he frequently, as in his article on Lucretia, points out their discrepancies.

A more learned and accurate scholar, M. Beaufort, had made it the subject of a separate treatise a hundred years ago.* Pcrizonius had taken nearly the same view of the matter half a century before; and Cluverius had devoted a portion of his great work (*Italia Antiqua*) to an elaborate statement of the contradictions and uncertainties of the Roman historians. But it was not till the beginning of the present century that the subject underwent a full investigation, and that the portions which may be relied on were separated from those which are purely fanciful or greatly misrepresented. The Germans have, as usual with that excellent and admirable people, been the principal labourers in this department of literature; and it is to Niebuhr chiefly, and after him to Gottling, and Wachsmith, and Savigny,† that we are indebted for the materials from which a more correct view of the subject is now obtained. Nevertheless those materials are after all very scanty for the formation of a complete history. Writing in the first three centuries was but rarely used, and the meagre registers of events which the pontiffs kept, with whatever inscriptions had been carved on brass, almost all perished when the city was sacked and burnt by the Gauls, A. U. C. 360 (364 according to Varro). The few monuments that could be collected, after the Gauls retreated, were very little consulted by the early historians, who appear, like Livy and Dionysius, to have rather occupied themselves with putting the traditions preserved in popular songs‡ into the form of a narrative than with any examination of the evidence upon which those traditions rested. Moreover, as even the earliest historians, too, lived five centuries and a half after the foundation of the city, their knowledge of the subject was little more likely to be correct than that of later writers. It is only by examining and comparing the narratives thus composed, the fragments of old

* *L'Incertitude des Cinq Premiers Siècles de l'Histoire Romaine*, 1738. His work on the Roman Government (*La République Romaine*, 2 vols. 4to.) was published in 1766, and is by far the most learned and accurate treatise on the subject.

† Heyne, in 1793, placed the subject of the Agrarian laws upon its right footing: and Vico, a learned Italian, at the beginning of the eighteenth century, had taken, with regard to some important points, the same view of the Constitution which late inquiries have countenanced.

‡ The learned and ingenious work of Mr. Macaulay, '*Lays of Ancient Rome*,' well deserves to be consulted by the reader of the early Roman history.—Mr. M. might render much service by undertaking a Roman history, still a great desideratum.

laws, and other monuments accidentally preserved in them, the allusion to facts scattered over other matters, above all the treatise of Cicero on Government (*De Republicâ*), fortunately recovered in part, and in composing which he appears to have relied for the early history upon the lost books of Polybius, that any approach can be made to the real truth respecting the origin of the Roman Government. That Cicero himself should in some respects have fallen into mistakes concerning it, that in his time the subject should have been surrounded with doubt, can little surprise us, when we reflect how much controversy prevails among ourselves at this day upon the early history of the English parliament, although we only live at the distance of six centuries from the events in question, and the use of writing has been universal during the whole time, and although a body of men devoted to literary pursuits has always existed, and the records of the age are still in perfect preservation. Much of the uncertainty which prevails upon these important subjects arises, both in the history of the Roman government and our own, from contemporary writers omitting to describe matters of familiar observation, and which they assumed that every one must be aware of; a remark applicable not only to the early but to the later history also of the Roman institutions.

Finally, it must be stated as an additional embarrassment to the student, that the most important work upon the subject, that of Niebuhr, is written in a manner peculiarly confused and obscure. He shows no management or mastery of his materials; he never keeps in mind the necessity of proceeding from things already explained to new information; he does not state plainly, and by way of either narrative or exposition, what he has to tell, but works by reference, and remark, and allusion; he forgets that he is to instruct us, and assumes that we already know the matter he is dealing with. A work less didactic, less clear and plain, less easily or agreeably followed, can with difficulty be named, among books of the class to which it unquestionably belongs, works of sterling value and original genius.

Such are the difficulties of the inquiry upon which we are about to enter; and if we would form a notion how necessary it is to the accurate knowledge of the Roman government, we have only to recollect the great errors into which authors of the highest reputation have been led by indiscriminately taking for granted

whatever they find in the two most famous Latin historians. Not only have most of the commentators, as Sigonius,* Onuphrius Panvinus,† P. Manutius,‡ treated as authentic every thing save the miracles, which Livy himself was fain to reject; but Machiavel and Montesquieu actually suppose, from the manner in which Dionysius speaks of Romulus dividing the land, that each person at Rome had a small allotment which he could not exceed without breach of the law; and both these authors, conceiving this poverty and equality to be essential parts of a republican government, regard the Agrarian laws, from time to time propounded, as attempts to restore the equality by enforcing this imaginary maximum.§ Under the pressure of these difficulties, and the influence of these inducements, it is fit that we now proceed to deal with the subject.

That a certain portion of the early Roman history is purely fabulous, no one of course has ever doubted; but it was a long time imagined that the greater part might be true, and thus men had become habituated to believe everything but the preternatural passages. There seems, however, no foundation for the belief that the greater part of the story is an account of real events, or even that all the actors in the scenes described were really existing persons. Some of them may have had no existence at all; and some of the events are certainly mere poetical fictions, not quite so improbable as the miraculous portions of the tale, but quite as unreal. Thus a close examination of the accounts of Romulus, and his supposed brother Remus, has led all who have undertaken it to the conclusion that the whole is a fiction, and that Romulus is only the personification of the Romans, the earliest inhabitants of Rome, as Æolus among the Greeks was of the Æolians, and Dorus of the Dorians. The personal existence of Numa is at the best extremely doubtful, though it has not been given up so completely as that of Romulus. The sounder

* *De Ant. Jur. Civ. Rom.* He supposes that Romulus established the relation of patron and client universally between the patricians and plebeians.

† *De Civ. Rom.*, cap. vii. He gives the impossible fable of the Rape of the Sabines at length.

‡ *De Senatū*, cap. i. He adopts the same notion as to patrons and clients with Sigonius. Paul Manutius (*De Civ. Rom.*) terms Livy "Scriptor interdum parum diligens;" but in the same passage describes Dionysius as an author of the most consummate accuracy, and one "cui fidem non habere nemo debeat."

§ Mach., *Discorsi*, l.—Mont., *Grand. et Déc.*, cap. 3. He makes this supposed equality the main cause of the Roman power.

opinion seems to be that these two kings must be taken merely as representing two early periods of the history of the people; Romulus, or the age of Romulus, being the earliest period, when the Romans were at war for the existence of their horde and town with all around them—Numa, or his age, being the subsequent period of comparative tranquillity, when some progress was made in the arts of peace. Of the events so constantly recited, one may be mentioned, as an example of universal credit being given to a narrative almost as contrary to the ordinary course of nature as the supposed relationship of the god Mars to the founder of the city. The rape of the Sabines could not possibly have happened in anything resembling the way in which it is related; not to mention that one account makes the number of women seized amount only to 30, while Dionysius gives it at 527, and Plutarch at 683: numbers manifestly taken at random, either by the authors, or by the makers of some ancient ballads, from whom they copied. Similar inconsistencies and improbabilities are to be found in the succeeding reigns, even when the persons mentioned appear to have had a real existence. The fight of the Horatii and Curiatii is in all its particulars evidently poetical; but the murder of the elder Tarquin by the sons of Ancus, thirty-eight years after he had obtained the crown in preference to them, and at the time when he must soon have been removed out of their way by old age, to say nothing of the manner in which it is said to have been perpetrated (by a peasant sent to ask at an audience redress for some injury) and of the contrivers of the plot suffering Servius, Tarquin's favourite, to rule in his name some days after he was killed—all this is manifestly a fiction, and, if intended to pass for history, a very clumsy fiction; and other stories expose and refute themselves. But parts of the early history, which are not so improbable, seem equally unfounded: as the accounts of Tarquin silently striking off the heads of the tallest poppies to suggest a proscription of the chief men at Gabii, when the emissaries from his partisans there came to receive his instructions. This is plainly borrowed from Herodotus, who recounts that the same symbolical advice was given to Periander; and indeed the rape of the Sabines bears a close resemblance to a passage in his history, the rape of the Athenian women by the Pelasgi of Lemnos.—(Lib. vi. cap. 137.)

That the city was founded about the year 753 before the Christian æra, is the opinion now most prevalent, although Sir Isaac Newton's chronology fixes the date at 693. That we may find at a very early period the origin of those divisions among the inhabitants, and of those institutions which with some material alterations were continued for many ages, seems nearly certain; and these changes appear to have begun very early, some of them at the beginning and others at the end of the second century from the foundation of the city.

By tracing back these divisions and institutions, with the help of tradition and the occasional mention of particulars in various classical remains, we seem justified in concluding that at the earliest period, the period assigned to Romulus—in other words, the beginning of the nation—the inhabitants consisted of a single tribe, akin to the Latins, but that another, the Sabines, was in a few years added; and that the former were called *Ramnes*, the latter *Tities* or *Titienses*. Each tribe was composed of freemen, children of freemen alone; and the whole free people formed the two tribes. Each tribe consisted of a hundred houses, clans, or kindreds (*gentes*), consisting of different families originally related to one another, but afterwards agreeing chiefly in having the same religious rites; and they were divided into bodies called *curiæ*, of ten houses (*gentes*). A chief, or king, was at the head of the whole: he was chosen by them, and had the command of their forces in all warlike or predatory operations. He was also the chief priest and the chief judge of the community; but the other powers of government were vested in a council or senate, chosen out of the tribes in the manner to be presently examined.* The persons composing these two tribes were not only free and free-born, but also natives, that is, born in the place and descended from natives. The tribes thus consisted of all the inhabitants who were both free, free-born, and native. There were others who did not come within this description,

* Among the theories propounded on this subject there is one of Götting, which has met with great favour, and, as it should seem, very unjustly. It represents the houses (*gentes*) as divided into ten *curiæ* or bodies of ten, and then supposes a second division into ten *decuriæ*, consisting of parts of *gentes*, and so arranged for the purpose of choosing a *decurio*, to be the senator of each *decuria*, thus supposing a refinement still greater than mere representation; for it is a division of the same bodies in two different ways for different purposes. Both Niebuhr and the other recent authorities entirely reject Livy's theory of nomination by the king; yet it cannot be denied that the probabilities are much in favour of some such scheme.

and these were chiefly poor followers of the families, slaves set free, or the children of slaves, and strangers who had come to live in the new city. None of these were classed in either tribe; but the followers and freed-men were dependants upon the houses or individual members of the tribe, and called *clients*, from the Greek word *, signifying to hear or obey. It is probable that the strangers were mostly of the same origin as the population of the country on the west of the Tiber, or Southern Etruria, and became a much more numerous and important body, when, about a century after the foundation of the city, the inhabitants of Alba removed to Rome upon their town being destroyed, and were classed with the Tuscan settlers. A third class, composed of these free men, was then added to the two former, and called *Luceres*; supposed by some to be a Tuscan name. It was divided, like the other two, into ten *curiæ*, or bodies of ten houses (*gentes*) each, and it had, like the Ramnes and Tities (the Latins and the Sabines), its followers, dependants, or clients. These houses, however, of this third tribe were regarded as inferior to those of the other two, and called the lesser (*minores gentes*), the others being the greater (*maiores gentes*). There seems less reason to suppose that Tullus Hostilius, in whose reign this addition of a third tribe took place, was an imaginary person, than that Romulus and Numa were such; but nothing can be more improbable than the greater portion of the stories related of his times, especially the most remarkable of them, the battle of the Horatii and the Curiatii.

In the next reign, that of Ancus, there is more reliance to be placed upon the narrative; and it appears that in his time considerable bodies of Latins came to settle at Rome on the capture of their towns; but they were not formed into a separate tribe, or enrolled among the three already formed. Nor of the last of those three, the Luceres, were any members admitted into the senate until the next reign, that of Tarquin the Elder, when a hundred of them were added to the senate, but called Senators or Fathers of the lesser houses (*patres minorum gentium*)—those of the Ramnes and Tities being of the greater (*majorum gentium*). The Latin and other strangers thus formed a body of persons separated from and inferior to the three tribes, still more than the third tribe was separated from and inferior to

* ΚΛΙΕΙΝ. An old Latin word had the same sense.

the other two. This body is by some writers, of which Niebuhr is the chief, considered to have had no existence before the settlement of the Latins in the time of Ancus. But though its members were increased by that settlement, it must, to a certain degree, have been in existence previously; because those who afterwards composed the Luceres had stood in the same relation to the Ramnes and Tities before they became a third tribe, in which the Latin settlers in Ancus's time stood to the three tribes; they were aliens, and enjoyed no political rights; the tribes, that is, the free and native people, were alone regarded. They may, in a sense, be said to have formed a privileged class, as compared with the others; but it is much more correct to say that the whole Roman people—all the free and free-born natives—were alone regarded in the government from the earliest times; and that the others, chiefly aliens, had no place in it. The members of the tribes were called *patres* or fathers; and afterwards, when the title of *patres* began to be given peculiarly to the more ancient of the body, who constituted the senate, they were called PATRICIANS, or members of the class to which the *patres* belonged. Those who depended on them as clients were reckoned with them, and in some sort were considered to be part of the tribe to which their patrons belonged, though they did not share its rights, except through those patrons. The rest of the community were called *plebs*—plebeians, or commonalty.

But out of this distribution there soon arose the relation of a privileged to an unprivileged class. The number of the houses was necessarily limited to those who had been of the three tribes always; for no family could be enrolled among them unless by an act of the whole State adopting or naturalizing them, or by filling certain high offices; consequently the numbers of their members never could greatly increase; indeed they continued for a long course of years to do little more than maintain their original numbers, while the plebeians rapidly increased, not only by the natural progress of population, but by other means. Settlers flocked to the city as often as it conquered any Italian town; dependants, or clients, on the family of their patrons being extinct, became plebeians if they did not choose any other patron; slaves who obtained their freedom, though they generally became clients of their former masters, yet sometimes were thrown off altogether, and became plebeians. The patricians, too, were not

allowed to intermarry with the plebeians; and the fruits of any connection thus formed being illegitimate, all became plebeians. As the plebeian body, then, continued to increase, while the numbers of the patricians remained at first nearly stationary, and afterwards began to decline, a division of the whole nation into two classes was well established; and the smaller class had rights which the larger body did not share.

The only difference between the account here given of the plebeian body's origin, and that given by Niebuhr and his followers, is, that they consider the body to have been established all at once in the time of Ancus; whereas we hold it much more consistent with the facts and with probability to consider this body as having gradually increased from the very beginning. Indeed, even Niebuhr, although he considers the great body of the plebeians to have been formed out of the Latins who became subject to Rome in the time of Ancus, acknowledges that such a body as we have described must have arisen in the very earliest times. But the existence of the patricians as a privileged order—in other words, the existence of an aristocracy—cannot, with any accuracy, be referred to the earliest times, when all the people, that is, the tribes or free and native Romans, enjoyed the privileges for themselves and their retainers, foreigners alone and slaves being excluded. It is only when a body, and a large body, of native Romans had grown up, the descendants of foreigners, freed-men, the offspring of illicit intercourse, and cast-off retainers, that we can with any correctness of speech denominate the patricians, descendants of the original free and native houses, a privileged order, and the government, in which they held exclusive authority, an aristocracy.

Beside their exclusive right to places in the senate, the patricians exercised direct authority as a body. The *curiæ* into which the houses were formed met in an assembly called the *comitia curiata*, which appears to have been attended not only by the heads of the houses (*gentes*), but by all housekeepers, that is, by the heads of all families. Those are manifestly wrong who suppose that it was a representative body; that is, a body of persons either named by the houses, or who, from their position at the head of those houses, might be said to attend the assembly on their part. For, in that case, whether we regard the senate as appointed by the king, or as composed of decurions, officers

of the houses, or as chosen by the houses, its composition would be substantially the same with what Niebuhr ascribes to the *comitia curiata*: so that there must have been two bodies composed of the same, or nearly the same persons, and appointed in the same, or nearly the same manner, yet exercising perfectly different functions in governing the same community; an absurdity which never could have been established, or have grown up in any scheme of administration.*

In the *comitia curiata* the patrons of the greater houses (*majorum gentium*) had precedence over those of the lesser (*minorum gentium*), possessing the exclusive right to hold certain offices, as that of pontiffs, which gave them the whole superintendence of religious rites, though each tribe had a priest (*flamen*) of its own, each having deities of its own. The two greater tribes had also twenty *feciales*, or heralds, one for each curia, and these acted as ambassadors on all occasions. They had two criminal judges, from whose decisions, however, there lay an appeal to the *comitia* or assembly of the curiæ, as there did from the king's decision in civil, though not in criminal causes. There was thus, as it were, an aristocracy within an aristocracy; all the patricians being privileged as contradistinguished from the plebeians, but two of the patrician tribes (Ramnes and Tities) having privileges to the exclusion of the third (Luceres).

The patricians assembled in the *comitia curiata* had so far legislative authority that all laws were passed by them, but on the proposal of the senate; and the senate could only sanction, after discussion, measures proposed by the king, without the power of originating any. In like manner, and on the same proposal of the king first, and then of the senate, all officers, civil and military, were appointed in the *comitia curiata*; which likewise decided on peace and war in the same way, the decisions of the senate being only final on administrative questions. The king himself was elected by the *comitia curiata*, and on being elected was armed with the supreme power (*imperium*) by a separate law of the same body. This course was pursued in the

* Niebuhr's own doctrine respecting the senate makes it composed in precisely the same way in which he imagines the *comitia curiata* to have been, of a senator for each decuria (I. 21), so that each senator must have acted in two capacities; a refinement, as well as an anomaly, hardly conceivable in a rude community.

case of the first four or five kings, but not in that of Servius Tullius, who, making the commons believe that Tarquin had survived his wounds, and ingratiating himself by paying their debts, first ruled for some days in Tarquin's name, and then obtained their approbation to his succeeding; but he then procured a law to be made giving him the supreme power.* This singular proceeding of first electing the chief magistrate, and then by another act giving him his power, was often adopted in the choice of consuls, who, being elected by the centuries, were endowed with authority by the curiæ. But it was more strange in the earlier times, when both the election and the arming with power were performed, though by separate acts, yet by the same body. The imperium of both king and consul ceased on entering the city; out of the city they were absolute. The king first, afterwards the consuls, convoked the comitia curiata, through the officers (*lictors*) of the curiæ, each having its own.

The two tribes, or twenty curiæ of the greater houses, were not the only aristocracy within an aristocracy in this singular frame of government. There was a select body, probably distinguished from the rest originally by their greater wealth, and thus enabled to serve on horseback, while the others were foot soldiers. They were accordingly called *Equites*, or horsemen, and we have given them the name of knights. They at first consisted of three centuries or hundreds, one in each tribe, and the elder Tarquin added a second century to each of the original centuries, and then, according to some indistinct accounts, proceeded to double the number of the whole. Servius added twelve centuries, or, as some say, only six, assuming there had been twelve before; for all are agreed that there were finally eighteen. A doubt may be raised whether or not the three subordinate centuries instituted by Tarquin were taken from the plebeians; but there can be no doubt that the twelve new centuries of Servius Tullius were formed of the noblest and wealthiest citizens of the plebeian order. It has been held by Niebuhr and

* Livy and others have fallen into a manifest error in supposing that Servius was the favourite of the senate, and chosen by that body. The patricians hated him so much, and he was so sensible of it, that Paullus (the juriconsult) has related an instance of the precautions he took against them: he made them all inhabit a particular quarter of the town (thence called *Vicus Patricius*), because it lay so exposed to his force on the high ground above, that he could easily crush them if they were found plotting against him.

others that when the plebeian order became numerous, and formed the infantry of the army, all the patricians had a right to serve on horseback; and they thus consider equites and patricians as synonymous, contrary, it must be admitted, to the whole current of classical authority, and to all that seems most established in the maxims of the Roman government, as well as the habitual forms of expression most familiar to classical students. It may suffice to cite the common expressions of 'equestrian order,' 'equestrian dignity,' 'equestrian census,' and to mention the common saying that this order was the breeding-ground of the senate (*seminarium senatus*)—senators being deemed irregularly chosen, if not from such patrician or such plebeian office-bearers as were also of equestrian rank. The officer who commanded the Equites (*Tribunus Celerum*) held a high rank under the kings, and was employed to convoke the curiæ, and preside at their comitia. Under the republic he was called master of the horse (*magister equitum*), but was only an occasional officer, appointed by the Dictator, of whom we shall presently speak.

A very important change was introduced by Servius. Sprung himself from an humble, probably a servile origin,* owing his promotion to the favour of the commons, whom he always courted, and viewed most jealously by the patricians, whom he despised and controlled, he appears to have thought that the time was come when the growth of the plebeian body and the undue authority, oppressively exercised, of the patricians, rendered a new arrangement of the political power both safe to attempt, and expedient if successfully pursued. He began by passing many laws in the comitia curiata for regulating the rights of parties in respect of contracts, and of injuries and wrongs: probably for defining the rights of citizens and of the two orders. He also transferred from the kings to judges the jurisdiction in private causes. He either divided more of the public lands among the commons, or gave them a better title to what they already held; and he is even said to have abolished the practice both of pledging and imprisoning the person for debt. Finally, he raised both the freed-men and slaves to some consideration in the community, enrolling the former among the lowest class of citizens in the distribution which we are presently to consider, and giv-

* He is supposed to have been a natural son of Tarquin by a slave. Cic. de Rep., II., 21, mentions this tradition.

ing the latter a yearly religious festival (*compitalia*), during which they were treated as free. Next, in order to balance the thirty *curiæ*, he distributed the commons into thirty tribes—four city, and twenty-six country tribes; at the head of each he appointed a tribune; and under his presidency the tribe met for the levying of its share of the taxes and raising its quota of men to the army. This arrangement with the power of meeting could not fail greatly to increase the weight of the commons, as well as to afford them the means of acting in concert, and thus extending their power much further. But this was not the whole of Servius's reforms; and it is remarkable that the spirit of his legislation gave no power to the multitude without at the same time, and in the same proportion, providing a safeguard against its abuse, and a security against its exceeding the bounds which he deemed safe for the State. He added twelve centuries of equites to the six already existing of the patricians (or six to the twelve), and these new equites were all plebeians of wealth. He then divided the whole people,* that is, the two orders, patrician and plebeian, into five classes, into which persons were enrolled without any regard to their rank or dignity, but merely with a view to their wealth, according to which all were taxed to the revenue; and each class consisted of so many centuries of house-keepers. The property of the first class was about 320*l.* † of our money, or 400*l.* according to another calculation, and of the last the tenth of this sum; and to a sixth division belonged those who had less than this, and those who had no property at all, and who were called *proletarii* and *capite censi*. The whole people by centuries were to assemble in *comitia*; but the centuries, thus classified according to their property, were not composed numerically of so many hundreds, for this would have given the great majority to the votes of the poorer classes. The first class consisted of nearly as many centuries as all the other

* People (*populus*) in the early times, and indeed until the distinctions between patrician and plebeian were greatly diminished, means properly the former order, that is, the original free and native Romans and their descendants, that is, the three tribes of the houses. When the word, therefore, is used in a larger sense it is necessary to give notice.

† Nothing is less certain than the old computation of money; for undoubtedly if we reckon 100,000 asses (the highest census) at so many pounds of copper or brass, a fortune would be indicated far beyond what can have been fixed. See, however, Nieb., vol. i., pp. 448-458, Transl.

four together: it contained eighty centuries, and an additional one of artisans for constructing military machines; while the second, third, and fourth contained twenty each, and the fifth thirty. Then the eighteen centuries of equites, belonging to the higher or wealthier descriptions, and separated from the whole people before their distribution into classes, voted with the first class, which may be said to have had ninety-nine centuries, while all the other four classes numbered only ninety; and only ninety-five or ninety-six, even if two centuries of military mechanics and the centuries below the classes be reckoned.* Now, as the votes were taken by centuries in the assembly, each century voting by a majority of its members and reckoning as one vote, this arrangement gave the decided majority to the wealthier class against the more numerous; the intention of Servius being that which Cicero says ought ever to be carefully maintained in a commonwealth, preventing the greatest influence being exercised by merely the greatest numbers: "*Ne plurium valeant plurimi.*" (De Rep., II. 21.) The addition of the century called *Ni quis scivit* is remarkable; it was in order that any one might vote who had omitted to vote in his own, as Festus says, "*Ne quis civis suffragii jure privaretur.*" Both Cicero and Livy praise this whole system, and, as it seems, justly, for at once giving each citizen a voice, and yet apportioning his influence to the respectability of his station.† The four inferior classes could only be called on to decide in the event, which

* Five tribes were added to the thirty of the Luceres in later times, but the whole numbers never exceed thirty-five. At one time when Porsetina had conquered Rome, and she had lost all the left bank of the river, ten tribes were taken away, and one having been added, this explains the passage of Livy, in which the number is said to be only twenty-one. This ingenious and satisfactory explanation is Niebuhr's, to whom we also owe the emendation and interpretation of the passage in Cicero de Rep., II. 22, from which the account in the text is taken. But the numbers in Cicero, if we adopt Niebuhr's supposition, are still not reconcilable to the total of one hundred and ninety-three, always represented as the number of the centuries; for he speaks of ninety-six as the remaining centuries, after deducting those of the first class, and Angelo Mai can only make the total one hundred and ninety-three, by making the remainder ninety-five. Cicero, if the passage is not corrupted, seems plainly to have held that eight from the inferior classes must join the eighty-nine of the first to give a majority, and to have supposed that the equites had only six votes—and then it is difficult to see how he gets his sum of eighty-nine.

† Cic. De Rep., II., 22:—"Neque excluderetur suffragiis (reliqua multitudo) ne superbum esset; nec valeret minus, ne esset periculosum." Livy, I., 43:—"Gradus facti ut neque exclusus quisquam suffragio videretur, et vis omnis penes primores civitatis esset."

hardly ever happened, of the centuries in the first class differing. For an uneducated, and indeed barbarous people, there seemed no better arrangement than one which should thus recognize each man's right to vote, but only make the votes of the multitude decide in case there was a difference of opinion among the upper classes. It is further to be noted that the people were distributed in the centuries according to their age; each class having an equal number of elders and younger men, or men under forty-five and above that age. So that the latter, though considerably fewer in number in each century, yet forming centuries, and the vote being by centuries, had an equal voice with the young men.* Thus the voices of five elderly persons had as much weight as those of nine younger ones.

The distribution into centuries, and the account taken of ages, numbers, and property, was made the foundation both of the taxes and of the military service. The army was formed of the people by centuries. The *seniores*, or elder centuries, remained in the city as a kind of reserve, and, unless in case of necessity, the younger (*juniores*) alone took the field. Every one was obliged to arm himself, as well as to pay taxes (*tributa*) according to his fortune, or class; and those under the fifth class were not called upon to serve excepting in cases of urgent necessity.†

The comitia centuriata being established by Servius, they appear very soon, if not at once, to have come for some purposes into the place of the comitia curiata. If the kingly government had been peaceably continued the choice of the king would have been vested in them, on the proposition of the senate; as they afterwards chose the consuls and all the great patrician magistrates, except the dictator, master of the horse, and interrex. They had legislative power likewise, but could only entertain questions submitted to them by the senate; and the assent of the comitia curiata was likewise necessary to give their decision the force of law. The effect, too, of long usage, as well as of the patrician influence, was such that very few legislative measures were for many years brought before the comitia centuriata, the senate

* The population returns of 1831 give the proportion of ages upon 10,000,000 of males—from 15 to 39 years old, 3,608,000—from 40 to 69, 2,049,000, or as 9 to 5; and if all above 69 be added, the proportion is still as 18 to 11.

† Niebuhr supposes that those who had some property, but under the census of the fifth class, were the *accensi*, who followed the army unarmed, and took the places and armour of those killed in battle.

and the *curiata* continuing in most cases to make the law. The constitution of *Servius* being introduced towards the end of the second century, it was not till the laws of the twelve tables, and the adoption of an uniform system of jurisprudence, a hundred years later, that the general legislative power became regularly vested in the *comitia centuriata*.

That there is much of a fabulous description in the commonly received history of *Servius* no one now doubts. The whole account of the conspiracy against him, his murder, the conduct of his daughter, and of *Tarquin*, who dethroned and succeeded him, is so full of gross improbability and contradictions that it has generally been given up as the fiction of the early poets, working upon some tradition of facts which it is now impossible to sift from their inventions. But that *Servius* really made the whole, or the greater number, of the changes in the constitution which have been ascribed to him seems to be admitted. He has, however, like our *Alfred*, and like *Charlemagne* in France, become the person to whom every early arrangement is traced; whatever the Romans obtained of free and popular institutions was supposed to be a revival of his laws which *Tarquin* had abrogated; and things which it cannot be pretended that he ever did, he is fancied to have intended doing, as resigning the crown, and giving the supreme power to two consuls.* Another theory, but resting on far better foundations, represents him to have taken the Greek forms of government as his model in the distribution of political power. *Cicero* expressly describes him as having been thoroughly versed in the Greek customs, under the instruction of the elder *Tarquin*, his protector, who is known to have been the son of a Greek.† And there is a striking resemblance of his reforms to those of *Solon*, a century and a half before; especially in his abolition of servitude for debt, his distributing the citizens into classes according to their property, his apportioning the military services and taxation to the census, and his giving all citizens, including clients,‡ a vote in the assembly. The likeness however ends here; for *Solon's* constitution was essentially democratic from the votes being given by individuals and not by

* Niebuhr himself adopts some of these traditions.

† *Cic. de R. P.*, ii. 20.

‡ It is supposed that *Solon's* fourth or lowest class was chiefly composed of the serfs or cultivators, whose name (*Thetes*) it bore, and who stood to the *Eupatridæ*, or noble families, in the relation of clients to patrons.

classes; and though the lower orders were excluded from all offices, and the two next from the higher, yet the judicial power was given to the whole body, and given by lot; whereas the constitution of Servius, after all the additions which he made to the power of the commons, additions which wore an aspect much larger than their real substance, remained essentially aristocratic as before, until those changes introduced by him enabled the commons in the course of time to obtain a really democratic government.

The great favour which Servius naturally and justly enjoyed with the plebeians, was met by hatred equally sincere, but not so openly displayed, on the part of the patricians. There seems no reason to doubt that they joined in a conspiracy against him, which ended in his dethronement, probably his murder, and in placing Tarquin, the son of his predecessor, upon the throne. Although the legends and songs, and after them the historians, have without doubt exaggerated the vices of his reign, as well as the crimes by which he began it, it is certain that he exercised great tyranny, and that he was enabled by the aid of the patricians to undo nearly all that Servius had done for the commons. The meetings of the tribes were no longer held; the centuries were only kept up with the view to taxation and the army; the judicial power was restored to the crown; and the law which prevented pledging or seizing the debtor's person was repealed, if indeed such a law had ever been enacted.* The patricians, however, suffered very speedily for their profligate support of the tyrant, and their employment of his power to crush the commons. All authorities represent him as having been made king without any form of election, and certainly he was not chosen by the *comitia centuriata*. The probability, however, is that his election was sanctioned either by the senate or the *comitia curiata*; for it is hardly to be supposed that he should have omitted a confirmation so essential to his title, when he could so easily obtain it from his partizans. But the patricians did not expect him to surround himself with a body-guard, and by the power which this gave him to tyrannize over themselves still more intolerably than he permitted them to domineer over the people. By charges of conspiracy, and by all the other wonted

* It will presently be shown how great a share the law of debtor and creditor contributed to the power of the patricians.

acts of tyrants, he was enabled to banish or put to death such as threatened to oppose him, or such as had wealth which he desired to confiscate. He seldom assembled the senate, and hardly ever the curiæ; he made peace or war, and treaties with neighbouring towns, of his own mere authority; and in all respects governed as an absolute prince. His capacity appears to have been of a high order; and it is clear that he greatly extended the dominions of the city, both by conquests, and by colonies settled in order more easily to retain them, according to the Roman policy in all ages. He was enabled to place Rome at the head of the Latin league by his success over several of the Latin states,* and his intrigues with others. His power at home was increased by these foreign operations, and by the wealth which he thus obtained; but those who had set him up joined on the first favourable opportunity to pull him down.

During his absence at the siege of Ardea, a town on the coast, an insurrection broke out, said to have been occasioned by the licentious conduct of his son towards a Roman matron; the patricians joined its leader, Junius Brutus, and the people gladly availed themselves of the opportunity to be revenged on him whose tyranny had commenced with oppressing them. The Tarquins were expelled; and all ranks being disgusted with a form of government under which all had alike suffered, it was resolved that the chief magistrate should thenceforward be elected yearly, and not for life; and, as a further security against usurpation, that two should be chosen with equal powers. These were called *consuls*, and being named by the popular assembly, the *comitia centuriata*, they were armed with the supreme power (*imperium*) as the kings had been, by a decree of the curiæ. The revolution was affected with as little change as possible in the other parts of the government; and it was at first marked with great moderation towards the exiled family. The senate, which Tarquin had by his proscriptions reduced to a small number, was completed to 300, and it appears to have assumed the chief direction of affairs. They resolved to deliver up all Tarquin's personal property, and allow him to sell his lands, in the hope that he would attempt nothing against the republic. The course upon which he entered, of intrigues and plots for his restoration, and the wars which he excited with this view among

* Cic. de R. P., ii. 21.

the neighbouring states, put an end to all such kindly dispositions ; and the senate found it necessary to prepare for their defence by enlisting the commonalty still more completely in their cause. The goods of the Princes were given up to the people as plunder, and their lands were distributed among them. The patricians now found it necessary to secure the support of the other order, by giving up the greater portion of their domains ; and seven jugera (rather more than four acres and a quarter) were allotted to each plebeian. The laws of Servius were restored ; a solemn determination, sanctified by oaths, and fenced by the outlawry of all who should contravene,* was taken never more to suffer regal authority ; but beyond this, and giving an appeal to the plebeians from the criminal jurisdiction of the consuls, similar to that which the patricians always had from the decision of the king and judges, no material change in the polity of the state appears to have been introduced. The government continued to be aristocratic under the consuls, as it had been under the kings, with only the additional security to the patrician power, which was obtained from the choice of the executive magistrates being vested in bodies, over whom the aristocracy had the most complete influence, and from the powers of these magistrates being limited to a year's duration.

The legendary history of Rome has added many fictions to the true account of this revolution, both in what regards its immediate cause, the manner of effecting it, the subsequent conduct of those engaged in it, and the events of the war to which it gave rise. What foundation there may be for the story of Lucretia, the feigned idiotcy of Brutus, the conspiracy and the death of his sons or nephews, the assassination in Porsenna's tent, and Scævola's devotion, the voluntary abandonment by Porsenna of his conquest, the defence of the bridge by Cincinnatus—it is in vain now to inquire. That these things never could have happened as they are described, and that some of them are wholly inconsistent with dates † and facts, all authorities seem now to be agreed. We shall most safely read the Roman history of those ages if we confine ourselves to the general results ; and it is a somewhat remarkable circumstance that

* Whoever should attempt to obtain regal authority, might be put to death without trial.

† Brutus, a child at Tarquin's accession, is represented as having a son grown up twenty-five years after.

modern times have furnished instances by no means unlike that of the Roman revolution. The conduct of the senate respecting the royal family reminds us of the early stage of the French revolution; and the alteration which the intrigues and wars of the Tarquins occasioned in their treatment by the Romans somewhat resembles the changes which the first invasion of France by the Allies and the Bourbon Princes occasioned at Paris. Had the French stopped at confiscation of the emigrant property, the parallel would have been complete. The alarm excited by the invasion of France afforded no justification, nor even any palliation, of the atrocities for which it was made the pretext; and though the fact of the republican party being the minority, greatly overmatched by the royalists, and generally by those averse to a commonwealth in every part of France, may explain why the system of terror, with all its enormities, was resorted to, and may account for a course of wholesale change as well as cruelty, being pursued so opposite to the proceedings of the Roman patricians and plebeians, who seem to have been nearly unanimous in their opposition to kingly government, yet this fact affords no kind of vindication to those whose motives it illustrates. The treatment of the royal family in 1830 is consistent with the scope of these remarks; and in one respect our own revolution of 1688 seems to resemble that of Rome: as little was done as appeared possible in changing the system or even the dynasty; and all the measures adopted had for their aim the restoration of the former constitution, and the counteraction of recent encroachments.

CHAPTER XI.

CONSTITUTION OF ROME.

(Continued.)

Patrician power—1. Patrons and Clients—Feudal resemblance—*Ærarii*—Error of authors—Clients in Sparta, Crete, Thessaly, and Attica—2. Monopoly of Offices—Senate—Conflicting accounts—Dionysius and Livy—Errors of authors—Censors—Choice of Senate—Practical checks to Censorial power—Senate's functions—Variations in its power—*Patres et Conscripti*—Senate's influence—Dictators—Consuls—Pretors—Patrician oppressions—Public lands—Agrarian laws—*Spurius Cassius*—*Licinian Rogations*—Patrician creditors—Tribunes chosen—Their powers—Progress of popular power—Decline of *Comitia Curiata*—Rise of *Tributa*—Course of legislation—Double legislation—Anomalies—Solution of the paradox—*Senatus Consulta* and *Plebiscita*—Checks to the Tribunes—Superstitious rites—Laws of the *Auspices*—Senate's errors—Democracy established—Practical defects in the Government—*Decemvirs*.

THERE were three great constituent parts of the power possessed by the patricians—the relation of patron and client—the exclusive possession of offices—and the structure of the senate; and out of these arrangements arose in the fourth place their monopoly of the public property in land, and their oppression of the plebeians.

1. Although the relation of patron and client was at first established for the protection of the poor dependant, and was indeed a consequence of that poverty and dependance, yet it gave great power to the patricians, because it not only attached numbers of followers to each, but continued to influence the client, and make him subservient after his circumstances had become improved. The relation was of the closest nature. The client's existence might almost be said to merge in that of his patron. He could only sue and be sued in the patron's name, and the patron was bound to defend all his suits. The patron had jurisdiction over him, and in early times he had even the power of inflicting capital punishment upon him. Like husband and wife, by our laws, they could not be witnesses for or against each other. The courts of justice did not afford any protection to the client against injuries offered by his patron; the religious sense of the sacred duty which bound the latter was accounted

sufficient to restrain all excesses, but it appears to have been the only restraint. One of the oldest Roman laws, of which any fragment remains, declared the patron who injured his client a sacrifice to the gods, that is, condemned him to capital punishment, probably to be inflicted by the pontiff.* The existence of the patron's rights for so many ages, without any abuse, and of the client's subordination, is only one of the innumerable instances which the history of every constitution affords of the consolidating, the counteracting, and the healing effects produced by manners and habits upon positive institutions and their operation. This relation was hereditary on both sides; the client's children being under the protection of and bound by allegiance to the patron and his representative, that is, the hereditary head of the family. The patron, whose landed property, or whose possession of the public land was considerable, generally gave his clients portions to cultivate; they paid in all probability a portion of the produce; but the grant was always resumable at pleasure. In any extraordinary necessity of the patron, as the expenses of a public office, the portioning a daughter, the ransom of himself or his sons if taken in war, the being condemned to pay damages in a civil or fines in a criminal proceeding, the client, if he could afford it, bore a part in his patron's aid, with the *gentiles* or members of the same house.† The clients were often able to realize property to a considerable amount; for while those in the country farmed the patron's land, those in the towns carried on the trades and practised the mechanical arts, from which patricians were at all times excluded by their dignity, and plebeians in the earlier period by the warlike habits of the nation, and the common feeling of antiquity, which connected citizenship with property in land; and when a client died without making his will the patron was his universal heir.—It is

* "*Sei Patronos clienti fraudem faxit acer estod.*" This is generally considered one of the laws of the twelve tables; but P. Merula has maintained that it was a law of Romulus, that is, one of the most ancient of the laws, which, with the modern ones, and those brought from Greece, were formed into the twelve tables. His chief arguments rest on an ancient MS. of Servius (*Ad Æn.* vi. 609), where the law is ascribed to Romulus and the twelve tables, the common editions giving it to the twelve tables only, and on Calpurnius Piso, who wrote in the time of Trajan.—*De Legg. Rom.* cap. ii.

† The distinction between *house* and *family* must always be carefully kept in view. In this account of the Roman constitution, *family* always means the persons related to each other, as in the modern sense; *house* means the gens, or clan, the relationship of the members of which could not be traced.

not surprising that with so many points of resemblance to the feudal relation of lord and vassal, authors should have traced the latter to the Roman times; but the speculation seems groundless, for the very essence of the feudal relation was the holding land under a lord, and owing certain duties in respect of that land; whereas the *clientela* and the grant of land had not any necessary connexion, although they might be combined. The clients are represented by most authors as having voted with their patrons in the *comitia curiata*, at least after the plebeians became powerful, and endeavoured to carry measures in those assemblies. But there seems no reason to believe that they ever voted except in the *comitia centuriata*.* Slaves set free by their master were understood to become his clients, and probably did so become at all times; but Servius is said to have provided for this by a positive law, intended as some compensation to the patricians for the admission of freedmen to votes in the assemblies of the centuries.†

The number of clients which the more wealthy patricians had is represented as very large. When Attus Clausus, founder of the Claudian family, removed from the Sabine territory to Rome, he was followed by 5,000 persons dependent upon his family; and when the Fabian family left Rome, where they had for six years filled the consulate, they carried with them 4,000 clients to Etruria, where they were all soon after destroyed. But it became in process of time usual for whole towns and districts to place themselves under the protection of patricians, and thus become

* Niebuhr (I., 21) has laid it down, with a dogmatism somewhat extraordinary upon such a subject, that "there cannot be the least doubt that the clients lived in vassalage, cultivating the lands of the Equites."

† Dionysius states very positively the admission of freedmen to the rights of citizens by Servius; but Niebuhr holds that this was impossible, because their admission is represented as dating from the discovery of the Tarquin conspiracy by a slave, and his manumission in consequence; and also because freed men only obtained the right of voting in the tribes two centuries later, when Appius Claudius was censor. The facts on which these two reasons of Niebuhr rest appear to be with difficulty reconciled. It is, however, possible that Servius enrolled the freedmen with the lowest class, which would give them no right of voting. So far as these rights of citizenship were conferred by enrolment in the centuries, the freedmen became *ararii*. It is an error to suppose that the term *ararii* included only the *accensi*, *proletarii*, and *capite cens*: all whose property did not consist in land were *ararii*, whatever its amount might be, and they might be enrolled and taxed in one or other of the higher classes, although not entitled to bear arms. The citizens of other states who shared in the franchise of Rome, for example the citizens of Caere, were enrolled among the *ararii*.

their clients. This must have greatly increased the power of those individuals, and the influence of their order.*

The relation of patron and client has been traced not only to the other Italian tribes, as the Sabines, Latins, Etruscans, but to the Greek commonwealths. The Helots were only a tribe or caste of cultivators, and no individual landowner had any property in them, although they were attached to the soil; and they were held in a state of abject slavery by the government. A caste of the same description existed in Crete, called the *Menoïtes*. But in Thessaly the *penestæ* more nearly resembled the Roman clients; for they were attached to particular families; though their treatment appears to have been arbitrary and cruel. The Athenian *Thetes*, though much more free, and more mildly treated, were in like manner attached to the Eupatridæ, or noble families, cultivated their lands, and paid in return a sixth of the produce, their persons being liable to seizure for any default. They were probably admitted to the rights of citizens by Solon, his fourth class being called by the same name. In all these instances the subject-caste appears to have been the original natives of the country, reduced by conquest to a subordinate condition; and it is highly probable that the greater number of the Roman clients originally belonged to conquered tribes. But no distinction whatever was made between the different kinds of client, and the foreigner stood upon the same footing as the native, although he was generally of more independent fortune, only seeking protection in consequence of the disabilities under which he lay as an alien. The importance of this class of clients, together with the value of the whole body to their patrons in their contests with the plebeians, no doubt tended to secure them good treatment in times when the force of the religious

* There cannot be a greater mistake than that which yet has been extremely prevalent, of confounding the plebeians with the clients. Almost all writers have been led into the error by the passage in Dionysius, that Romulus placed the commons under the protection of the patricians as clients. Plutarch and others, with almost all the commentators, and even, which is most singular, the juriconsults, have from thence considered the clients as constituting the plebeian body, or at least as the origin of that body. Livy clearly shows the difference in various passages, as ii. 64, iii. 14. In these, especially the first, the clients are expressly placed in contradistinction to the plebeians. How any one who was acquainted with the controversy between the patricians and the plebeians, and the oppressions of the former, could ever fall into such an error seems incomprehensible. How, for instance, could the patron oppress his client as a creditor when they had not even a right of action against one another?

obligation may be supposed to have proved less effectual. Freedmen and their descendants, foreigners, and provincial towns, formed in the later periods of the commonwealth the only body of clients.

2. All the offices, the power of which extended over the whole nation, were at first filled by the patricians, and the office-bearers were named either directly or substantially by them. Some doubt prevails as to the manner of the election; but it is probable that in the earlier ages the senate sometimes, and sometimes the *curiæ* elected. As long as either the one or the other chose, the appointment was directly in the patricians; but even after the centuries came to elect, the choice substantially remained in the hands of the wealthier class, that is, of the patricians, by means of their own votes and the votes of their clients; and the offices were still not tenable by plebeians. The greatest struggle of the two orders was accordingly upon this latter point; and as the people's power increased they by degrees obtained admission to all the magistracies. In proportion as they gained these important points, the government became less aristocratic, and at length assumed a democratic form, with scarcely more aristocratic admixture than seems unavoidably to flow from the natural tendencies of society, what we have termed the Natural Aristocracy. There was still, however, and to the last, one strong hold from which the patricians never were entirely driven—one body into which the plebeians never obtained free admission, except through official titles*—that was indeed the most important of all the bodies in the state, the senate itself; and as this constituted the earliest and the most powerful support of the patrician influence, it is necessary to examine its structure with particular attention.

The senate was a body originally of a hundred chief men of the houses (*gentes*) of the Ramnes tribe, in whom were vested some of the most important functions of government. When the Tities were added as a second tribe, another hundred were added to the senate; and a third hundred from the Luceres, as we have seen, were added a considerable time after the formation of that tribe.† A great obscurity, as might be expected,

* There is reason to think that some plebeians were admitted to fill up the numbers of the senate in the earliest age of the republic.

† Niebuhr, i. 21, has a very unaccountable theory respecting the composition of the senate. He supposes the Luceres to have been the first senators, because they had the

hangs over the origin of this celebrated council; but a much greater diversity than could have been supposed possible exists among the accounts which have reached us of its construction.* That only patricians were at first capable of sitting in it, and that its number of 300 continued down to a comparatively recent period, the seventh century of the city, are undisputed facts; that the senators, in what way soever appointed, held their places for life, or until removed for misconduct, or loss of qualification (*census*), is equally certain; that a certain age, and in later times a certain fortune, were required to qualify a patrician for the place, is alike undeniable: but the precise age and fortune are matters of controversy, probably because they were at first ill defined, and may afterwards have varied at different periods; and there are conflicting accounts of the manner in which the senators were chosen. On these accounts opposite theories have been founded, and it does not appear that the recent inquiries of Niebuhr and his followers have led to a result upon which it would be safe to rely.

The two conflicting accounts are those of Dionysius and of Livy; for Festus, who wrote in the third century of our æra, and took his materials from Verrius Flaccus, a writer in the Augustan age, may be supposed to have derived, through Verrius, his authority from Livy or from those writers whom Livy had consulted; or Livy and Verrius may both have written upon the prevailing traditions of their times. Dionysius describes the nomination as an election,† and an election of a somewhat complicated kind. Each tribe, he says, were desired to choose three (*ἀρεῖσθαι*), then each curia to select three more (*ἐπιλεῖλαι*), and adding the ninety supplied by the curiæ (*προχειρισαντο*) to the nine appointed by the tribes (*αποδείχαισι*), Romulus placed over the whole as their chief, or leader (*ἡγέμεων*), *Princeps*

religious rites under their care, and the Ramnes (Latins) to have been afterwards admitted, and last of all the Tities (Sabines), and that these, and not the Luceres, were admitted by Tarquin the Elder. This seems wholly inconsistent with the ascendancy of the Sabines, and afterwards of the Latines and Sabines united. Nor can it possibly be conceived, that, when the Luceres did not even form a tribe, they alone should have composed the senate.

* The subject of the choosing of the Roman senate is fully discussed by many of the learned antiquaries and jurists of the sixteenth and seventeenth centuries. Maguragino, *De Senatu*, cap. xiv; P. Manutius, *De Legg. Rom.* cap. iv.; F. Hottonianus, *De Senatu*, ii. 1; Car. Sigonius, *De Art. Jurr. Civ. Rom.* ii. 2.

† Dion. i. 12.

Senatus, the one whom he had himself appointed as his lieutenant when absent from the city. Livy and Festus, after Verrius, affirm that the senators were chosen originally by the kings and afterwards by the consuls (Festus adds, erroneously, by the military tribunes), who both appointed them in the first instance, and filled up vacancies.* The election described by Dionysius is improbable, because so great a refinement in that rude age can hardly be conceived possible. But the theory of some late writers is much more improbable, because they ascribe a still greater refinement to the institution. They suppose the tribe divided into ten *curiæ*, or bodies of ten houses (*gentes*) each, for general purposes, but they say that there was another division into *decuriæ*, each consisting of parts of several *gentes*, and a division merely for the purpose of electing a senator. Nothing certainly can be more improbable than this refinement.* Niebuhr thinks that the *decurio*, or head of each *gens*, was, by virtue of his office, a senator; but it does not appear what constituted a head of a *gens*, or indeed that such a title was recognised at all. It seems upon the whole most reasonable to conclude that the king appointed the senators, and afterwards the consuls, not only because we thus at once adopt the account of the Roman historians, but because such a constitution of the body is much less refined than an elective one, and because it coincides with the subsequent nomination of senators by an executive magistrate, the censor. If the patrician body had possessed the elective power ascribed to them by those who have followed Dionysius, it is not easy to conceive that they should have abandoned it altogether, when by the expulsion of the kings their influence became more predominant. The passage

* Livy, i. 8, says, "*Centum creat senatores*"—(i. e. Romulus); and this might apply to the creation of the office, without showing that the choice was made by the king himself. But when he states that Brutus filled up the deficiencies occasioned by Tarquinius Superbus (ii. 1), he expressly says, "*primoribus equestri gradu lectis explevit*." In the speech which he makes for Coriolanus (iv. 4), we find the words, "*ab regibus lecti aut post reges exactos jussu populi*." The *jussu populi* must refer to offices conferred by the *curiæ* and the centuries (it is for the present purpose immaterial which), and that by means of such offices the eligibility into the senate was obtained. The account of Festus is much more distinct—"Ut reges nihilgebant sublegebantque ita post exactos eos Consules quoque et tribuni militum consulari potestate legebant." This, he says, continued until by the *Lex Ovinia* the choice was given to the censors. This law is nowhere mentioned but by Festus; and commentators and juriconsults have doubted its existence.—(J. Zamoscii *de Stu. Rom.* i. 3; *ap. Græv.* i. 1074.) Livy alone makes Brutus fill up the vacancies occasioned by Tarquin; Dionysius, Plutarch, and Festus all ascribe this to Valerius, his colleague.

† Götting—History of the Roman Government.

of Cicero (*Or. pro Sext.*), on which reliance has been placed, as showing that from the beginning of the republican government the people chose the senators; and the expression used by Livy, that they were appointed by desire of the people, certainly can only refer to the power which all classes had of being appointed senators, when chosen to offices that qualified them.*

The senators holding their office for life, it was only upon their death, or removal, that vacancies could arise. It was always required that senators should be persons of wealth, and of a certain age, which according to Cicero was 30, though some have given a lower and some a higher age. Under the empire 3,500*l.*, afterwards 7,000*l.*, and then 10,000*l.*, was the property required. If a person had become infamous, either by sentence of a court, or by notoriously bad life, he was removed; so he was if he had fallen into bad circumstances, and had no longer the fortune required to support the dignity of the station. Holding any of the higher offices, those called *curule*, that is, consul, prætor, curule, ædile, or censor, and also the quæstorship, though not curule, gave a claim to be chosen senator. Whoever held those offices could attend the senate, both during his office and after he retired; but though he had the right of speaking, he was not a senator, and probably had no vote. To be a senator it was necessary that the person should be chosen at first by the consuls, or dictators, afterwards by military tribunes with consular power, when these were appointed in place of consuls, as a concession to the plebeians, who sought a share in the consulship; and almost immediately after this struggle the register of the senate was made up by the censors, who were then chosen by the patricians, and endowed with great authority, both in order to relieve the consuls from duties incompatible with the conduct of military operations, and

* "*Diliguntur ab universo populo, aditusque in illum summum ordinem omnium civium industria habuit.*"—(*Pro Sext.*) It never could be Cicero's intention to state that the whole people, plebeians as well as patricians, were both eligible, and electors of the senators, from the moment that the monarchy was overthrown. Still less is it conceivable that the plebeians had free admittance into the senate in the middle of the third century, while it was not till the beginning of the fourth (A.U.C. 308), when they obtained by Canuleius's law the right of marriage with patricians, and by Licinius's the right of being chosen consuls. Least of all is it conceivable that the whole body, patricians and plebeians, having had the right of election in the year 244, gave it up to the censor, a patrician officer, in 308, and without a struggle. As to the expression of Livy, *jussu populi*—see last note but one. Possibly in the passage of Cicero *ab* should be read *ex*.—F. Hottom. ii. 1.

in order to prevent the plebeians from profiting too much by the success which had attended their late struggle. The care of the revenue, the power of ascertaining not merely the numbers of the people but their fortunes, and of assessing them accordingly, the authority to stigmatize persons of bad conduct with infamy, the power of removing a citizen from one tribe to a lower, or a higher—that is, from a county to a city tribe, and *vice versâ*—as the punishment or reward of his conduct, together with the general guardianship of the laws and superintendence of their due execution, rendered this an office of the highest importance, and the censors immediately obtained the right of filling up the vacancies in the senate, as they had, by the nature of their office, the power of declaring a senator no longer qualified by fortune or character, and thus of removing him. The census was taken every five years, that period being called a *lustrum*; and the office of censor was only created occasionally, in general at the end of every five years; but very early after its creation (A.U.C. 321) its duration was confined to a year and a half, and only extended to three years, at a later period, in so far as any works undertaken by the censors remained to be completed. It does not appear that the power of removing and choosing senators was exercised oftener than once in five years; and we are unable to ascertain that the other powers of degrading and promoting were exercised more frequently. The choice and removal of senators, however, was by no means left perfectly free to the censors, nor had it been in the breast of the consuls and dictators before the institution of the censorial office. A solemn oath was taken to exercise all the powers of the office without favour or partiality, and this among a religious people like the Romans must have had a great influence on the conduct of the magistrate.—Then a senator, if removed, was injured in his reputation; and though not rendered infamous, which only happened if he was also stigmatized (*infamâ notatus*) by the censor, yet he must have suffered so much injury as to make the act one of great delicacy. The removal, too, could only be effectually made if both censors agreed; for one censor might restore those whom his colleague had removed,* and a future censor, it is supposed, might restore a senator unjustly

* On this, as on so many other points, much uncertainty prevails. Paul. Man., *De Sen. Rom.*, cap. iii.—J. Zamoscius, *De Sen. Rom.*, i., 19.

removed; * certainly a future election to a curule office might enable a censor again to choose the party. The vacancies were thus not likely to be many on each occasion; though seven or eight removals at once have been mentioned by authors. These, with the vacancies by death, would not much more than suffice to make room for the nomination of those who had held the five offices; because these being annual must have supplied a considerable number of persons not already senators; and it was held almost as injurious to be passed over as to be removed.†—Another check to the censorial power was provided by the risk which each censor ran of being himself treated harshly or unjustly had he thus treated others, and the indignation of the patrician body, had the discretion been abused as to them, and of the plebeians, had a capricious promotion or degradation been attempted in the tribes, must have contracted the power in its general exercise; so that there is no difficulty in comprehending how the extraordinary functions of this office could be exercised for four centuries without encroaching materially upon all the other departments of the state, although its powers appear so extreme in theory that they who cannot understand the possibility of a balance in any government, or the modifications which in practice all power whatever must undergo, would at once pronounce the censorship incompatible with the existence of the Roman constitution, and that at the very least the senate must have been packed in the space of two lustrums.

The commons (Plebs) never as such were directly eligible into the senate; but as they obtained the right to all the offices in succession, they became thus qualified, and when censors from their body were appointed, the plebeian holders of curule offices were chosen senators as well as the patrician. But the plebeian offices were of themselves, after the early part of the sixth century (A.U.C. 537.), considered as a qualification. Fabius Buteo

* The *Lex Clodia*, which prohibited the mark of infamy (*Censura nota*), required the concurrence of both Censors, as well as the formal accusation before them of the party; but Cicero regards this as having destroyed the office. *Or. pro Sext.*—*Or. in Pinarem.*

† Those passed over (*preteriti*) are plainly indicated by Festus in the passage so often quoted on this subject; for he mentions the *loco moti* as well as the *preteriti*; yet some have confounded these two descriptions, and have supposed the *preteriti* to be those whose names the Censors omitted in calling over (*recitando*) the senate. P. Man., cap. iii.

having at that time been chosen dictator for the express purpose of filling up the senate, reduced to one hundred and twenty-three by the Punic war, then going on, after enrolling all who had held curule offices, he completed the number by enrolling those who had been tribunes of the commons, and also some plebeians as well as patricians, merely on account of their military services and honours*—for the senate might, therefore, now be considered as a popular body, quite as much so as the British House of Commons during the times when it was formed upon the principle of virtual representation.†

The power and jurisdiction of the senate is matter of less controversy. It appears at first to have engrossed almost all the functions of government, except the command of the army, and the decision of the greater causes, which were both reserved for the king. But the senate had the power of making peace and war during the monarchy, of levying troops, of raising taxes and managing the revenue, of distributing the public lands. Every ten senators had a chief, called the *curio*, and the ten *curiones* of the Ramnes tribe governed each five days in rotation when the throne was vacant; they were then called *interreges*, and the vacancy an *interregnum*. One of them also presided in the senate, and acted as viceroy or lieutenant (*custos urbis*) in the king's absence. The power of the senate, however, did not extend beyond the city; the king had absolute power beyond its limits. In the earliest times of the republic the senate appointed the dictator. Afterwards a dictator could not be named without a resolution of the senate, but the nomination was given to one of the consuls. Until the rise of the plebeians to power, the senate's previous consent was required to the entertaining any proposition by the other bodies in the state. There seems to have been originally no effectual check upon the senate's power, except the prerogative which the king had of convoking it, and of prescribing what should be discussed before it.

It is to be observed that there was a great difference between the senators of the greater and lesser houses. The former, those

* F. Hottoman's treatises *De Mag. Rom.* and *De Sen. et Sctis* deserve to be consulted as conveniently bringing together much of the learning on these subjects, with great accuracy and impartiality.

† Liv. xxiii. 23, says that he thus chose one hundred and seventy-seven senators with extreme impartiality, showing a preference of classes, not of individuals (*ut ordi ordini non homo homini prælatum esse videretur*), and with universal approbation.

of the Ramnes and Tities, were called upon first to give their opinion; and the latter, those of the Luceres, were only allowed to vote without speaking, unless they had been consuls. No difference whatever was made between the *Patres*, the original senators, and the *Conscripti*, those who were added at the expulsion of the Tarquins to fill up the number. The phrase *Patres Conscripti* is commonly translated "*Conscript Fathers*;" but it was equivalent in the old Latin idiom, which did not use conjunctions, to "*Patres et Conscripti*." As the kings originally had the exclusive right of bringing any subject before the senate, it is probable that this right passed to the consuls; but it was afterwards obtained by all the consular tribunes and prætors, and of course by dictators and other extraordinary officers, and in later times by the tribunes of the commons. The senate was a great administrative council, endowed with all except the authority to make laws, to choose the ordinary magistrates (for originally it chose the dictator), and to make peace and war. These functions were vested in the comitia, that is, in the assemblies of the people; but as the consul was almost always under the influence of the senate, and as the comitia centuriata could not be held without his authority, the senate could generally prevent their meeting.

Although the power and jurisdiction of the senate is less controverted, yet it varied exceedingly in different periods. We are at present to regard it chiefly in the earlier stages, before the popular influence was established. The rise of the commons in Rome, as everywhere else, was gradual; and we must therefore fix upon some time at which to consider the senate's influence. The greatest power which it ever possessed was immediately after the expulsion of the Tarquins: it retained all the authority which it had held at any time during the monarchy; and when instead of a king,* whose office was for life, and who had a body guard, there were substituted consuls who held their office for a year, and were answerable at the end of that time for whatever they had done while in office, the senate's power greatly increased.

The senate was from the beginning not merely the council of the king, as the *celeres* or *equites* were his body guards; it had

* They who treat Romulus as a real person relate the tradition, that, having excited the jealousy of the senate or the patrician body, he was assassinated by them; Livy says, torn in pieces. The encroachments of the chiefs and jealousy of the nobles were probably real events.

powers independent of him; engrossed the greater portion of the functions of government; and had a great weight also in legislation. Except the command of the army, the decision of private causes or lawsuits between individuals, and the duty of high priest, all which functions belonged to the king, subject only to the religious control of the augurs or soothsayers, the government might be said to vest in the senate within the city; beyond it the king was absolute in all respects. The senate levied troops, managed the revenue, disposed of the public lands. It had the sole power of proposing laws to the comitia, whether curiata or centuriata. The only check upon its authority was, that it could not assemble without the king's convoking it, and that it could not entertain any question which he had not brought before it. No new law could be considered in the comitia without the previous consent both of the king and the senate. It must, however, be borne in mind, that as regards the body of the patricians, no addition was made to their power by the previous veto of the senate; for whether a law was proposed in the curiata or centuriata, the patricians in the one case directly, in the other substantially, decided upon its adoption or rejection.

We have marked the distinction made between the different classes of senators, those of the greater and lesser houses. But no difference was made between the *Patres* and the *Conscripti*, or those added, on the expulsion of the Tarquins, to complete the body. When two consuls were substituted for a king, the right of assembling the senate devolved upon them, and it is likely that at first they also had, like the kings, the exclusive right of propounding the subjects for consideration. This, however, was afterwards obtained by other magistrates, namely the *Prætor*, together with the principal extraordinary magistrates, the dictator, the consular tribunes, the *interrex*, and the *decemvirs*. The influence of the senate was always great with the consuls, as long as these were chosen only from the patrician body, and it was one of the many consequences of this, that the comitia centuriata were not often held while the power of the senate was at its height. Originally, the choice of a dictator belonged to the senate, and the consuls naming him upon the senate's appointment, was only a form to testify that they did not object to this superseding of their own authority. Afterwards the consul named

a dictator at his discretion, when he was commanded by the senate so to do. Without choosing a dictator the senate could confer upon the consuls absolute power within the city, as they always possessed it beyond the walls. This was done by a vote passed in critical emergencies, that the consuls should take care the state suffered no harm; and sometimes, though rarely, the other great magistrates, as the prætors, were joined in the same vote. When the dominions of the republic were much extended, the principal duty of the consuls was the conduct of the wars in which the people were unceasingly engaged. The senate assigned to the consuls their provinces or commands. In like manner, when there was a necessity for a greater number of military commanders, and additional magistrates were created with the title of *prætor* (beside the original prætor, who remained in the city to administer justice in civil causes), the senate assigned the provinces of the prætors; and in later times, when it was necessary to provide for the government of many conquered countries, and it had become usual to commit these to magistrates who had already passed through their year of office, and were now called *pro-consuls* and *proprætors*, the senate determined the provinces, that is, determined which should be consular, and which prætorian. Thereupon those magistrates cast lots for them. The appointment of ambassadors, the giving audiences to those of foreign states, the awarding honours, the decreeing a triumph, a supplication, or an ovation, were in all ages the peculiar province of the senate. In certain causes judges were chosen out of the senate. This judicial power at a late period (A.U.C. 630) was transferred to the equestrian order, then shared with them, and afterwards by Sylla restored to the senate.

The authority thus possessed by the senate during the age when the assembly was composed of patricians, whom the rigorous law preventing plebeian intermarriages kept as a separate body, was, as might be expected, abused to the greatest degree. Not only the common people (plebs) were treated with insupportable haughtiness, and insults quite gratuitous, such as being summoned to the comitia by the sound of a horn, while the curiæ were cited individually, each by the lictor of his curia; but the public land, all that came to the state by conquest (which generally amounted to one-third, the rest being left to the conquered people, who paid

rent for it*) was parcelled out among the patricians, while the plebeians, when they got any, had only small allotments, not exceeding two jugera, or one acre and a half. These allotments were possessed by them in fee simple; and in the earliest times the whole of the plebeians were landowners, even the city tribes being, for the most part, engaged in agriculture, as they were not allowed to occupy themselves either with trade or the mechanical arts. The patricians held only some very small portions of land in fee simple; but they had large *possessions*, as they were called, that is, large tracts of the public land, which were by law resumable at the pleasure of the state, and were also by law held on condition of paying to the state a tenth of the produce of corn, a fifth of wine and all other produce, and some rent, it is uncertain what, for cattle in the pasture-land. As, however, the government was vested in their own hands, these laws were habitually evaded; and among the first attempts made by the people to lessen the patrician power was the proposed law for enforcing the payment of the rents by the patricians, restricting the extent of their occupation, and dividing a portion of the domains among the commons. Spurius Cassius, A. U. C. 227, first made this attempt, and was put to death by the patricians, upon the pretext that he had formed a conspiracy to restore monarchy. After a struggle of ten years Licinius Stolo, A. U. C. 387, succeeded in carrying his law to restrict the possessions to five hundred jugera (three hundred and seventy-eight acres), the number of cattle to one hundred, and of sheep to five hundred, dividing all the residue of the lands among the commons, in the proportion of seven jugera (five acres) to each, requiring a certain number of free citizens to be employed in the cultivation, and enforcing the payment of the patrician rents to the state. The law, however, was evaded in all its branches, and Tiberius Gracchus long after (A. U. C. 630) perished in an attempt to revive and extend the Licinian *rogations*, or proposed laws. The possessions, though resumable, never were resumed. The court of the prætor, exercising an equitable jurisdiction, restrained by his *interdict* (or injunction) all interference with the possession. The land thus held was transmitted to heirs or devisees, and conveyed to purchasers as if it had been held in fee. The error, therefore, of most writers in treating of

* The rent was one-tenth of corn and one-fifth of all other produce. These rents were farmed out by the state.

Agrarian laws does not, as Niebuhr maintains, consist in considering that those laws interfered with property, for they did directly interfere, or even that they established a maximum, for a maximum was established by them; but in considering that they prevented any person from holding above a certain extent of land by any title. The Agrarian laws did not prevent that; they only sought to limit the extent which should be held of the domain lands.*

But though this monopoly of land was sufficiently grievous, and the burdens imposed on the people heavy in proportion as the patricians escaped from the payment of their rent to the public, the worst oppressions exercised by that body were in their capacity of creditors. The law gave them power of the most unlimited and of the most barbarous kind; and the wealth of the order, amassed probably both by foreign commerce and by agriculture,† had reduced a great proportion of the plebeians to the condition of debtors. The person of the debtor could be seized and imprisoned, but he could also be worked and scourged like a slave until the debt was paid; and he was even liable to be cut in pieces by one or more creditors, in proportion to their demands, without any punishment being inflicted if the proportion was exceeded. In so cruel and bloody-minded a nation, an aristocracy so proud and unfeeling as the patricians showed themselves at all periods was sure to exercise such powers, except perhaps the last, without remorse; and the first great resistance of the plebeians, after the time when they joined their oppressors against the king as a common enemy, was about twenty years subsequent to that event (A.U.C. 263), when they left the city at a critical period of the war, indicating, it is supposed, a disposition to have back the kings, rather than any longer to bear the tyranny of the privileged orders. A most important advantage was the result of this measure. They obtained the power of assembling by tribes in a

* It would be quite as correct to assert that an English act of Parliament restricting copyholders to four hundred acres, limiting the number of cattle they could turn out on the wastes to half the proportion of their levancy and couchancy, and giving the lord all the copyhold tenements above four hundred acres, implied no maximum and no forfeiture of vested copyhold rights, as to contend, after the manner of Niebuhr, that the Agrarian laws did not interfere with patrician property and establish a maximum. The copyhold is, in contemplation of law, a tenure at the lord's will; and the resumption by the state in Rome would have been as violent an act, after very long possession, as the law we are supposing.

† See Arnold, *Hist. of Rome*, vol. i.

comitia tributa, which no patrician could attend,* and of choosing magistrates of their own, whose office it should be to protect them from all oppression. These were called *tribunes*, being elected by the assembled tribes. The accounts differ as to their original number, whether two or five;† but the right of the officer is certain, although he may not all at once have been invested with it. In the course of a short time the tribune could summon any one before the comitia tributa, and impeach him there; and he soon acquired another, and a singular power, that of stopping any measure, whether legislative or administrative, by his single negative, called his *veto*. So great was the force of this interposition (*intercessio*) that one tribune could throw out a measure, preventing it from becoming a *senatus consultum* (an order or resolution of the senate), or a law in the comitia, though his colleague supported it. The person too of the tribune was sacred, and could not be in any way affected during his office; insomuch, that if he were to enter the senate, where he had no right to be, though his presence of itself caused the business to cease, he being a stranger, yet no steps could be taken to make him withdraw. His presence had the same effect in the senate with a motion that the house be counted, which any one might make by saying *numera senatum*; and if the proper number was not present the business was stopped.‡ The same effect in the

* This is the generally received opinion; but there seems a plain mistake in supposing that the comitia tributa were first held on this occasion. It is much more probable that they had been held ever since the expulsion of the Tarquins, if indeed Servius Tullius had not originally established them. Certain it is that the account of the Valerian law, the law of Valerius Publicola, which so greatly endeared him to the people, is unintelligible, unless there existed comitia tributa at that time; because it provided an appeal for the plebeian against the sentence of any magistrate—that is, any patrician; and that could be no kind of security if the appeal was only to the patrician body which the comitia centuriata was, to all intents and purposes. It is an additional reason for disbelieving the common accounts, that we are told the trial of Coriolanus, A.U.C. 263, was the first instance of the senate giving up its judicial power to the people, and the first instance of any popular measure without a previous *senatus consultum*. Now this is the same date with the supposed origin of the comitia tributa. Is it likely that an assembly, then for the first time known, should at once both have obtained judicial authority, and afforded the first instance of any assembly acting without the previous authority of the senate? Is it not much more probable that these important steps were made by a body already existing, which was well known, and which had been for a course of years increasing its power?

† Two plebeian *adiles* were also allowed thenceforth to be chosen, with judicial as well as police powers.

‡ There is nothing known for certain as to the number which formed a quorum. For some purposes two hundred were required. It is said that for others four hundred

comitia curiata, was produced by a declaration of the haruspices that the omens were unfavourable, which defeated a measure agreed upon by both senate and comitia. If the tribune, however, opposed in the senate, the decree was still recorded (*prescriptum*), notwithstanding that he opposed the recording. This seems to have been the only exception to his absolute veto.

But great as was the gain thus made by the plebeian influence, it was not till their legislative powers became recognised that the commons could be said to have thrown off the yoke of the aristocracy. The previous consent of the senate, by a *senatus consultum*, was first dispensed with in the year 281 (v.c.), but the law so made at the comitia tributa only bound the commons. Soon after (304) the Valerian and Horatian law is said to have given the plebiscitum, or resolution of the tribes, general efficacy over all the orders of the state; but another law was made (A. v. c. 414), the Publilian, which made the senate a party to whatever the people might order; and the Hortensian law, at a much later period (A. v. c. 465), expressly declared the plebiscitum to have universally the force of law. The probability is that the two latter laws were only made to declare and enforce a law already in existence.*

The comitia curiata fell gradually into disuse as the centuriata, and especially as the tributa rose into power; latterly they were a mere form, and only kept in existence for the sake of religious ceremonials, the jurisdiction over which belonged to them. The struggles of the commons with the patricians were almost entirely made in obtaining the privileges for the comitia tributa; the centuriata being so entirely under the control of the patricians that no opposition could arise between them and the senate. The course of legislation, however, was the same in both tributa and centuriata. In both, as in the senate, and originally in the curiata, while these continued effective, only certain persons had the right to propose measures (*jus rogationis*, or *legis ferendæ*) originally propounded exclusively by the king. These persons were the two great ordinary magistrates, consuls and prætors; the extraordinary ones, dictator, interrex (who acted with consular

in later times were required, after the total number had increased to six hundred, and under the empire to one thousand.

* Dionysius gives the first of these statutes—Livy the second—A. Gellius, after Lælius, the third—P. Manutius, *De Legg.*, cap. xxxiii., judiciously suggests the explanation.

power when the consuls had not been named, and when there was no dictator, and was appointed for five days only), tribune with consular power, and of course the decemviri, appointed expressly to propose laws. The law was first prepared (*scripta*), then propounded (*promulgata*, quasi *prævulgata*) by the magistrate, who, if he desired to have the general assent, first obtained a *senatus consultum*, and on that grounded his proposal to the comitia; if he was a demagogue he proposed the law at once. The comitia, after discussion, in which only those allowed by the magistrates took part, voted by ballot, drawing lots for which century or tribe should vote first—should be first *asked* its opinion: hence the priority thus obtained was called *prærogativa*, and the majority of the centuries or tribes decided.*

The double legislation in this system, which has been observed upon by Mr. Hume as a very strange anomaly, inasmuch as the two bodies, the tribes and centuries, were wholly independent of each other, and so differently composed that the patricians and wealthy class preponderated at all times and of necessity in the one, and the numerous body, the multitude, without any rank, and with little or with no property, as necessarily prevailed in the other. But there was another anomaly, almost as great, in the conflicting powers of the senate; for although its exclusive legislative authority had ceased, it retained a concurrent power upon certain matters, having, after the disuse of the comitia curiata and the rise of the tributa, become not only a great and powerful administrative council, but also exercising important legislative functions, not only in assenting to the measures which were to be brought before the comitia, but also in passing certain S. C. and decrees, which had the force of laws, without any sanction of the bodies in which the general legislative power had become vested. P. Manutius has enumerated between twenty and thirty S. C. which were binding generally without any other laws to give them efficacy; and though their subjects are chiefly of an administrative or executive nature, as raising troops, sending ambassadors, repairing the roads, some are legislative, as fixing the rate of interest. It is supposed that the people assented tacitly

* Some writers have hazarded the assertion very confidently that, though the centuries voted by centuries, the tribes voted individually (*per capita*). The weight of authority is as entirely the other way as can be conceived on any such question. C. Sigonius, *De Jur. Ant. Civ. Rom.*, i. 17; Onuph. Panvin., *De Civ. Rom.*, cap. 69; N. Gruch., ii., 4; P. Man., *De Legg. Rom.*, cap. 37; Rosin. *Ant.*, viii. 2.

to the proceedings of the senate. But the solution of the difficulty lies in the tribunitian power. As the veto could at any moment stop the S. C., the senate was suffered to go on, just like our courts, acting under the powers of a statute, and making laws which are binding unless either house of parliament shall, on being apprized of them, dissent. The same remark applies to the legislation of the centuries. The knowledge that the tribunes could interpose must have tended to make the centuries often adopt measures towards which they had the greatest disinclination. But the knowledge that the comitia tributa could pass a law without either senate or centuries must have had still more weight with both. There can be no doubt that both the comitia had the same power of making laws. The tributa always exercised it, but until the year 414, as we have seen, the plebiscita were not generally binding. These plebiscita, like the S. C., were in most cases administrative or executive, as giving the lesser provinces to proprætors or proconsuls, and making peace, it being held quite clear that the centuries alone could make war, and only a single instance being found of the tributa taking this upon itself. But the Aquilian law respecting personal injuries, the Falcidian respecting wills, A. U. C. 714 (both inserted in Justinian's Codes), the Silian on weights and measures, the Attian, A. U. C. 620, on the right of tribunes to be named senators, were all plebiscita, and made by the tribes alone.* The centuriata are supposed by some to have made fewer laws than the tributa; but this position must be confined to administrative measures, for the greater number of the general legislative measures were made by the centuries, with the previous authority of the senate. The power of declaring war, trying for treason, and choosing the consuls, prætors, and quæstors, possessed by the centuries, and the power of making peace, trying for minor offences, and naming ambassadors and inferior officers, possessed by the tribes, appear really to have been the only exclusive privileges of these two bodies; and there seems no reason to doubt that the senate had the same concurrent authority, together with the exclusive right of naming a dictator and interrex. Now it must necessarily result from the existence of bodies with concurrent and equal powers, that each will yield somewhat to the others. If each of our houses of parliament could make laws, each would, on being asked by

* P. Man., *De Legg.*, cap. v.

the other, adopt partially measures to which it was averse, in order to prevent the greater evil of the whole measures being carried in spite of it; and the wish to gain the advantage of having a law or a measure of any kind adopted by both would incline the house which propounded it to rest satisfied with a partial accomplishment of its purpose. There can be little doubt that this was the effect of the co-ordinate powers possessed by the three bodies at Rome.* Even the absolute veto of the tribune found a practical check in various ways. Thus, if he prevented a consul from being chosen, the senate appointed an interrex, and might appoint a dictator—which was threatened in Pompey's case; or it could declare by a S. C. that the tribune was answerable for all the consequences of his intercession; or it could give absolute power to the consul, by the vote *ne quid detrimenti*. In these and the like instances the consuls and senate were secure as often as the tribunes plainly put themselves in the wrong, and were not supported by a very great majority of the people. Cicero's case illustrates this. The senate and centuries were decidedly favourable to his return from banishment; all the tribunes but two, whom Clodius had corrupted, took his part also; and the people being well disposed towards him, these two, Serranus and Quintus, did not venture to give their veto. Clodius, it must be observed, was the only dissident in the vote of the senate.

There was a more direct check to the tribune's power, and generally to the authority of the tribes, in the religion, or rather superstition, of that most superstitious people. Towards the end of the sixth century the Ælian and Fusian laws were passed, by the former of which the observation of the heavens, and the auspices, or examination of the entrails of birds, suspended all proceedings in the popular assemblies; and by the latter all holy days (*dies fasti*) were made to adjourn popular proceedings, and were consecrated to religious rites and to the administration of justice. The multitude had thus time given for reflection, and the upper classes for exercising their natural influence; and when Clodius obtained a repeal of the law in A.U.C. 699, Cicero declared that "the bulwarks of the public peace had been swept away" (*In Pison*. 4). To them he ascribed the escape of the community

* Before we can adopt Mr. Falck's doctrine (*Encyclopédie Juridique*, iii. s. 69), and Niebuhr's, ii. 240, that the senate's assent was required to give plebiscita a binding effect, we must get rid of all that has been said on the Hortensian and similar laws.

from all former seditions.* But before this law, which was probably declaratory, and to enforce the custom, the distinction had existed between the greater and lesser magistrates, with regard to the auspices. The consul, prætor, and censor could interpose at any popular meeting with the announcement that the auguries were unfavourable, and could thus prevent the adoption of any measure by the tribes, as well as by the senate and centuries. The lesser magistrates had no such power, although the tribune could use his veto. This privilege of the auspices put the patrician magistrates upon an equal footing with the tribunes, giving them in fact a veto. Now the result of a mutual veto must needs be a compromise, as has already been shown (Part II., c. II.). The senate acted without its accustomed good judgment when, instead of being satisfied with these checks, and, above all, with the veto of the auspices, they allied themselves occasionally with one of the tribunes to obtain his aid in obstructing his colleagues. They had recourse to this expedient against Tiberius Gracchus, who was compelled by it to have his colleague removed—the only instance of a tribune ever being displaced. Their error was still greater when they sought the like assistance as against their own natural ally, the consul. Upon the refusal of the consuls to appoint a dictator, A. U. C. 322, the tribunes were appealed to, and, by the threats of arrest, compelled them to obey the senate—a lesson on their supreme power which these magistrates never forgot, but once and again turned to their account, as against the patricians. It must however be allowed that when the number of the tribunes was increased to ten, this gave inevitably a considerable hold over them to the rival bodies, as it became the more likely that divisions should exist among the tribunes; and so far, therefore, this may be reckoned among the checks to the plebeian domination.

Of the anomalies to which we have been referring, no explanation whatever can be derived from the choice of almost all the magistrates who had the right of propounding laws being vested in the patrician bodies, the senate, and the centuries, because

* A singular uncertainty prevails respecting the date of these two laws. The *Ælian* is by P. Maunius held to have been a tribunitian law, as he says he can find no consul of the *Ælia gens*, which Sigonius and Onuph. Panvin. have shown that there are. But Hottoman ascribes it to Q. Cælius, prætor in A. U. C. 586, and the *Fusian* to Publius Fusius (or Furius) Philo, in A. U. C. 617, which agrees well enough with Cicero's statement that the law (in that passage he treats it as one; elsewhere, in *Fatin.*, as two) had existed near one hundred years. In *Pis.*, 5.

there was one office, the most important of all in this point of view, the tribuneship, in filling up which the tribes only could act. But the powers of that office and the general authority of the *comitia tributa* in a very short time so far diminished that of the patricians, that the government, from an almost pure aristocracy, became democratic, with an admixture of aristocratic influence.

But the machinery of government and legislation did not become capable of working without very great difficulties being encountered, and serious obstacles raised by this double legislation. The existence of two legislative bodies, distinct, independent, and hostilely opposed to one another, became so intolerable from their constant jarring and from the conflicting laws which they made, that the community had recourse to an extraordinary magistracy which should supersede both the one and the other order, be armed with dictatorial powers like a single magistrate, and at the same time resemble a popular body or council, by its numbers. Ten persons were constituted a Supreme Council to prepare a body of laws which should be binding on the whole people. They digested the old laws, with such additions as they thought expedient, chiefly borrowed from the jurisprudence of the Grecian States; * and these laws of the Ten, afterwards Twelve Tables being adopted by the senate and the *comitia*, became the foundation of the whole legal system. This important change took place at the beginning of the fourth century.

* It is the opinion of Niebuhr and others that nothing at all was taken from Greece; an opinion for which there appears no sufficient ground.

CHAPTER XII.

CONSTITUTION OF ROME.

(Continued.)

Government carried on by laws and legislative decrees—Consuls—Prætors—Ædiles, Plebeian and Curule—Quæstors, Civil and Military—Choice of Magistrates—Controversy de Biniis Comitibus—Dictator—Progress of popular power—Interrex—Consular functions—Provincial Pro-Prætors and Pro-Consuls—Vigour of the Government—Religious polity—Pontiffs—Rex Sacrorum—College of Augurs—Haruspices—Sibylline Decemvirs—Singular facts—Judicial duties of Magistrates—Cornelian laws—Judicial system—Judices—Centumviri—Quæstiones—Jus Quæstionis, or Merum Imperium—Divinatio—Special judicial laws—Abuses from thence—Analogy of Parliamentary Privilege—Impeachment—Cognitiones extraordinariæ—Examples.

In treating of the Senate and the Comitibus, we have nearly explained the subject of the Roman constitution as far as the supreme power is concerned, whether legislative or executive. For the administration of the government, as well as the machinery of legal enactment, was carried on almost entirely by what were called laws or decrees of those bodies; and the magistrates had little more to do than to bring propositions before them, and to carry their resolutions into execution, whether in their political or their judicial capacity, of which the latter formed by far the greater portion of their duties, unless in the case of the consuls who commanded the forces and governed the provinces, the quæstors who managed the financial concerns of those provinces, and some of the inferior provincial officers, as proconsuls and prætors.

The consuls originally succeeded to the whole power of the kings, and could order any one to be summarily put to death for disobeying their orders. This power was soon restrained by the Valerian law, which gave an appeal to the tribes in the case of a plebeian, the patricians having already an appeal to the curiæ or the centuries. Out of the city the consul was absolute; and in the city, when he acted with the senate's advice and con-

sent, as he generally did, his power was only bounded by the veto of the tribunes, and checked by the knowledge that at the end of the year he became a private citizen, and was answerable for all he had done in his office. The creation of censors restrained the functions of the consuls as we have seen; and their judicial power was transferred to the prætors. But still they retained the military command of the State, and could both raise and distribute its forces, appoint the officers, and take the money appointed for the payment of the troops, which the quæstors, who were at the head of the treasury, could not refuse unless upon extreme occasions. The tribunes were in fact the only magistrates not subject to their authority; and they had the duty of executing all the decrees of the senate, and all the laws made by the *comitia centuriata*.

The prætors were, strictly speaking, judicial; and they exercised extensive jurisdiction. But although edicts which they made at entering upon their office laid down the laws by which they were to be governed, and although some of these were termed *translatitious*, being taken from former edicts, and others new, yet there is no reason to believe that they departed materially from the received laws of the State. Whatever they added to the edicts of their predecessors was probably a mere statement in writing of the customary or common law. Their numbers were increased to six in the year A.U.C. 604, and sometimes there were as many as eight.

The plebeian ædiles were ancient magistrates created in A.U.C. 261, and they had both the superintendence of police and a petty jurisdiction in such causes as the tribunes delegated to them. They bore to the tribunes the same relation which the prætor did to the consul: they were his deputies to act under him, and his substitutes in his absence; but they did not, like the prætor and curule ædile, issue any general edicts. The curule ædiles created in A.U.C. 388 had a high jurisdiction, chiefly in matters of economy and police; but as connected with these, they kept a watch upon cases of an immoral description. They had the same practice with the prætors, of issuing an edict on entering upon office, to declare the rules which they should follow.

The quæstors or treasurers were either civil or military, the former having the control of the financial affairs of the State, the latter accompanying the consul on his military service for the

supply of the troops. Tacitus is supposed to be mistaken in his statement; that the office existed under the kings; that afterwards the consuls appointed the quæstor until the year 307, when the people elected him; and that the military quæstors were the more anciently appointed, the office of city quæstor not being created till a much later period. All other authorities are agreed in representing the city quæstor, or general financier, as coeval with the commonwealth, and the military as appointed long after—Livy says in the year 333. There were then two of each description; and in 488, when all Italy was conquered and divided into four governments, four new quæstors were chosen, one for each. The office was the first in the course of promotion towards the consulship and the senate; as such it was much sought after; and accordingly the number of quæstors was in later times increased for party purposes. Sylla raised it to twenty; and Julius Cæsar, whose kindly disposition ever kept pace with his thirst of power, made no less than forty, to gratify his adherents.

There is no part of the Roman constitution supposed to be better ascertained than that which relates to the choice of magistrates, and none which seems to have been less broken in upon by violence and usurpation. The comitia centuriata chose the consuls and prætors, censors, curule ædiles, and quæstors. The tributa chose the tribunes and all inferior magistrates. The senate appointed the dictator and interrex; and the tribes chose the tribunes with consular power. A controversy, however, was long carried on between two learned jurists, N. Gruchius and C. Sigonius, upon the question called "*de binis comitiis*," that is, whether the choice of the centuries required confirmation by the curiæ, and after them by the tribes; and whether in like manner the choice of the tribes required confirmation by the centuries. The affirmative was maintained by Gruchius, the negative by Sigonius, in a series of learned treatises in the latter part of the sixteenth century. The arguments of the latter appear greatly to preponderate; nor can the complete success of the plebeians in their struggle with the patricians be deemed compatible with the doctrine of Gruchius.

The choice of a dictator stood in peculiar circumstances. The senate decreed that there should be one appointed, but never named him; this was left to the consul, it is said, because the power conferred seemed to supersede his own, and therefore his

assent must be interposed. Certain it is that although the consul was generally supposed to take whatever name the senate pleased, his acting in the nomination was deemed absolutely necessary, and the senate never acted of itself in it; insomuch that when there was a manifest necessity for a dictator in the second Punic war, and one consul being killed, and all communication cut off with the other, instead of proceeding to appoint Fabius Maximus, the senate referred the choice to the people; and to prevent this from being drawn into precedent he was only called *pro-dictator*. Though the consul generally adopted the senate's suggestion, there were exceptions. Thus Clodius, to insult the senate and the office, named a door-keeper (Gricia), and P. Lacœnas, A.U.C. 397, named, in opposition to the senate, a plebeian, the first time the office had ever been so filled. The appointment of a dictator being odious to the people was more and more disused as their power increased, and from A.U.C. 554 to Sylla's time, 671, none was appointed. Sylla and Julius Cæsar were chosen dictators by the people, now reduced to submission. Till their time, with the exception of Fabius, the senate and consuls had in all cases named the dictator. During the struggle of the plebeians for the consulship the consular tribunes were chosen by the people when they had the ascendant, and when the patricians were stronger consuls were elected. This state of things lasted from the time of Canuleius's attempt to open the consulship, A.U.C. 307 to 387, when the first plebeian consul was chosen. These consular tribunes at first were three in number, and a fourth was added in 327; two more in 348; and they never were more than six. Notwithstanding the struggle between the Orders out of which this office arose, the plebeians were satisfied with the point which they had gained of being eligible, and elected none but patricians for half a century; nor after that time did they choose nearly as many of their own as of the other Order. At length their admission to the consulate itself put a period to the contention, and consular tribunes were chosen no more.

It is singular that with so great hatred of the mere name of king the Romans should have preserved that of *interrex* through all times of the commonwealth. In the vacancy of the consular office he was appointed, and only by the senate, only from the patrician body, and only for five days; but during these days he had the whole authority, civil and military, of the consul, as far

as it could be executed without leaving Rome. At the end of the five days he named his successor, and the second interrex held the comitia for the choice of consuls, which in practice came to be the principal function of the office. His power of proposing laws was necessarily limited, because no law, though adopted, could be confirmed and passed until it had been published about four weeks (three market days, at nine days' interval), and his own power did not extend to the second publication. In troublous times, however, the interrex appears to have acted more than ministerially. The law giving Sylla absolute power was propounded by an interrex; and the interrex and pro-consuls near the city were once armed by the senate with the extraordinary authority of providing for the public safety. The consuls were almost always, in the earlier times of the commonwealth, employed in commanding the armies of the state, and the consular power in their absence devolved upon the prætor, then called *custos urbis*. If the war had not been brought to a close when the consul's year expired, he was frequently intrusted in the command either till the operation in which he was engaged was finished, or for a time certain; and he had the title of pro-consul during this prolongation of his authority; but with all the authority, civil as well as military, though local, of consul. This prolongation was first resorted to in the year 427.* As the conquests of Rome increased, the provinces were given to pro-consuls and pro-prætors, that is, to the consuls and prætors upon the expiration of their office, and with a view to government merely, though there might be no warlike operations to conduct. In these provinces they exercised supreme power, and the possession of them formed the great object of ambition towards the latter periods of the republic. A third kind of pro-consul, and pro-prætor, was that of the military command being given in any expedition or province to an individual who was not at the time, nor had been immediately before, in office. This last was not a magistracy, but a mere command: the two former were magistrates, having the *potestas*, or jurisdiction, as well as the *imperium*, or command. The senate appointed in all the three cases; but in the first case, that of prolonging consular jurisdiction, and in the last, that of a private person being

* Nothing can be more clear than that Dion., lib. ix., is wrong in the statement of a pro-consul having been created in the year 275. Beaufort, i. 336, explains this error satisfactorily.

commissiomed, the concurrence of the tribes by a plebiscitum was required. In this third case the authority of the comitia curiata was also necessary to give the command, and it was necessary in order to clothe the consuls or prætors in the second case with the fullest powers. Accordingly they almost always either obtained it before leaving the city, or had it immediately conferred under their successors. In the distribution of provinces the senate was held alone to decide, although the tribes occasionally interfered, and with more or less success, according to the state of parties and their relative strength at the moment. For some time after the establishment of the tribunate the senate generally obtained the assent of the tribes, but this practice was gradually laid aside. In the year 631 a law proposed by C. Gracchus confined the senate's right to distribute the commands of the consuls and prætors, without any power of interposition being allowed to the tribunes, provided the distribution should be made before the election of these magistrates, and while it was unknown on whom the choice should fall. But this law only referred to the appointment for the conduct of warlike operations.

The whole review of the Roman government, as regards the magistracy and assemblies, shows how large a portion of its functions was performed by the latter, how inconsiderable in comparison by the former. The administrative as well as legislative power resided substantially in those bodies. It is enough to cite as an instance the first appearance of Cicero before the assembly of the tribes. It was in support of the Manilian law, and gave rise to one of his most exquisite orations. That law was simply a resolution that the command of the war against Mithridates should be taken from the pro-consul Lucullus, and given to Pompey, who was then with an army in Cilicia, upon another expedition. It cannot be doubted that this mode of carrying on a government, exposed as it is to various most serious objections, and among others to that of preventing any certain rules of conduct being prescribed, and of opening a wide door to oppression and abuse, has one great recommendation in times of difficulty, provided the people are not divided by party. Nothing tends more to inspire animation and vigour into the public councils, and promote the execution of whatever designs may be formed. It is in its nature a revolutionary kind of government, and, with all the evils, it possesses the advantages of that course of proceeding.

Rome was so constantly engaged in wars which placed her existence in peril, that for many ages she might be said to be in a revolutionary state. The combination, however, was not confined to the legislative and administrative powers. The judicial functions were also too often interfered with by the assemblies; and for this no excuse can be offered upon any principle, or in any circumstances which would not justify the suspension of all law during some extraordinary and momentous crisis.

Hitherto we have spoken only of secular or civil offices. But the religion of the State was at all times a most important part of its policy; it was entirely subordinate to the government, and formed a part of it. There were originally four pontiffs or high priests, and a chief (*Pontifex Maximus*). The king had been high priest, though not supreme in religious matters. On the expulsion of the Tarquins, a king for sacrifices (*Rex sacrorum* or *sacrificialis*) was created, whose wife was a priestess and had the title of queen; but he was under the chief pontiff. The number of pontiffs continued to be four till the year 453, when for the first time the plebeians obtained the right of filling that office, and four plebeian pontiffs were added. Until 649 the college itself filled up all vacancies, when by the Domitian law the election was given to the tribes, seventeen of whom being chosen by lot, their majority named the pontiffs; and this continued until Sylla restored the rights of the college, and doubled its numbers, among his other laws in favour of the aristocracy. The Domitian law was revived in 690 in favour of Julius Cæsar, whom the people elected and made chief pontiff, that place being vacant by death. The choice of chief pontiff among those who were already pontiffs appears always to have been with the tribes; and it was always an office for life. Until the year 500 no plebeian ever held it. All priests were subject to the pontiff: they could appoint any one to the priesthood against his will; and the more powerful priests, as those of Jupiter and Mars, attended the college of pontiffs. But the pontiffs were themselves subject to the jurisdiction of the comitia, although the interference seldom took place. The college had, beside its superintendence of temples, ceremonies, festivals, and the calendar, jurisdiction in certain matrimonial causes; and their consent was required for the adoption of children. The qualifications for the priesthood consisted in freedom from personal defect, and in there being no other

member of the same family in the same college. Moral character and mature age were not required. The dissolute in manners and the young men of seventeen could hold, as Julius Cæsar did, the office of High Priest of Jupiter.

The College of Augurs was, next to the pontiffs, the most important religious body; but its functions were confined to observing the signs supposed to be given of good or bad fortune, from the flight of birds, and from the manner of feeding of those kept as sacred by the State. Any sinister appearance gave the augurs the power of interfering with whatever proceeding, civil or military, they were pleased to interrupt. As men of opposite parties held the office, and their conduct must therefore have been watched, it may be inferred that there were certain rules or principles laid down to guide these absurd decisions. In the year 453 the place of augur was opened with that of pontiff to the plebeians, and five were added to the former number of four. Sylla added six more. The College originally filled up the vacancies in its numbers; but the Domitian law introduced the same mode of election as in the case of pontiffs; and that law, after being repealed by Sylla, was restored in 690.

The *haruspices* were a lower kind of augur, but forming no separate body, and having apparently no commission. They were irregular, and might for money be consulted by any one. They were held in great contempt by rational and respectable persons, though frequently consulted even by these. As there was absolutely no difference in their art, except that they examined the entrails of birds, and the augurs observed their flight and feeding, nothing can be more strange than the different estimation in which they were held, their science being precisely the same.

The only other religious fraternity which requires to be mentioned is that of the *decemviri*, and afterwards, in Sylla's time, the *quindecimviri*, for the custody of the Sibylline books, which they were not allowed to consult without an order of the senate. These books, which the legendary history represents to have been sold by a prophetess to one of the kings, probably contained nothing but directions for prayers and sacrifices. But the reports of what was found in them on any given occasion, had often the effect of controlling or encouraging the people. The plebeians were admitted into this body in the year 386. The appointment was

made in the same way and underwent the same changes as that of the pontiffs and augurs.

The entire control which the patricians had of the auguries and auspices greatly increased their authority with the people, until the plebeians were also admitted to the religious offices. But even after that change had taken place, the same superstition was constantly used to maintain the influence of the government, and also in the armies, to control or excite the troops. There is, however, a thing wholly unintelligible in all this if there were no principles or rules by which the augur was guided. That all parties should agree in showing reverence for the religion, and those who disbelieved, as well as those who had faith in it, can easily be understood; but that of conflicting parties one should allow the other to invent omens for its discomfiture, and that a person hostile to the college, when admitted to a knowledge of the gross impositions practised, should take no advantage of the discovery he had made, appears very hard to explain on any supposition except that of there having really been some general rules which were more or less followed by all.

With the exception of the military department under the consuls, and the legislative in the hands of the senate and the comitia, in which the magistrates acting as legislators, the whole duties of these magistracy were of a judicial description. The judicial system was somewhat complicated. In cases of treason the comitia centuriata decided; in cases which were punishable only with fine, the tributa. Trials were either private, that is, questions of civil right and injury, including minor offences; or public, that is, questions affecting the state, including the graver criminal cases. Beside the presiding magistrate, there appear always to have been a certain number of judges (*judices*). For this purpose a number of judices were annually selected from the body which by law was possessed of the privilege. The senate had it exclusively till the year 620: it was then transferred, at the sedition of the Gracchi, to the Equestrian order, with whom it remained for sixteen years, and it was then given to the senate and them jointly, three hundred being taken from each. The plebeians then obtained the right of adding a certain number from each tribe. Sylla, desiring to restore the power of the senate, which in that age had been exceedingly reduced, restored by his laws (*Leges*

Corneliæ) the sole privilege to that body. At his death the Aurelian law divided this privilege among the senate, equites, and paymasters (*tribuni ærarii*), numerous plebeian officers who had the care of paying the troops; and finally Julius Cæsar restored the exclusive power to the senate and equestrian order, with whom it remained. The prætor annually appointed four hundred and fifty of these two orders, and, according to the nature of the case, a certain number of these were chosen either by lot or by what was called *editio exhibitus*, that is, by the one party selecting one hundred, from whom the other chose fifty. Beside these judices there were *centumviri*, that is, one hundred and five, chosen five by each tribe, and supposed to be acquainted with the law. In cases before the prætor, if he felt a doubt upon the law, he referred the matter to the centumviri; if upon the fact, he referred it to one or more of the judices to examine. Upon the report of either, or both bodies, he pronounced his decree; and if he felt no doubt either on the law or the fact, he decided at once himself. The similarity of this to the practice of our courts of equity is striking; and as the account is taken from an author who wrote in the sixteenth century, and long before our present practice was established, no suspicion can arise of his having fancied the course of proceeding.* A power of challenging the judices, as drawn by lot, was given to each party.

Originally the supreme criminal jurisdiction was in the kings, and the consuls for a short time succeeded to this; but their jurisdiction was reckoned by the Valerian law, which gave an appeal to the people, that is to the tribes, and still more by the Horatian law half a century after (A.U.C. 304), which made it a capital offence to create any magistrate without appeal. The administration of criminal justice until the year 604 appears to have been confided in each case specially by decrees of the senate to the higher magistrates, consuls, prætors, and dictators, who were armed with the high judicial power called *jus quæstionis*—under the empire called *merum imperium*—which concluded all cases affecting the life or the civic rights of citizens, and the power of examining slayes by torture. *Quæitores parricidii* were also appointed occasionally to try murder and other grave offences. Perpetual and regular criminal jurisdiction of this kind was only given to those magistrates in that year. Beside these judices quæstionis there were

* Nic. Gruch., *De Com. Rom.*, i. 2.—C. Sig., *De Judiciis*, ii. 6, 12.

others who had the same name, and who assisted the higher magistrates, and attained to the office of ædiles. They assisted in the trials by superintending the choice or ballot for judices, by examining accounts and documents, by taking the evidence of such witnesses as were not examined *vivâ voce*, and taking that of slaves by the torture.* The presiding magistrate did not decide the cause, he only applied and carried into execution the law; the judices gave the verdict, and upon that the magistrate pronounced the sentence and saw it executed. The judices were sworn, except in one kind of cause, *divinatio*,† or determining the title of parties to prosecute a suit, and they voted by ballot. Originally, they voted openly; the ballot was introduced in the year 666 for all but cases of treason, and soon after for these also. A judge (*judex*) was allowed, if he pleased, to vote openly, and Cato did so in Milo's case, being one of the minority of thirteen who were for an acquittal. As at all times a law could be easily obtained for an extraordinary trial, or trial by a special tribunal, so the course of procedure was sometimes entirely changed by the same law—a natural consequence of the manner of governing, of carrying on the executive government by the means of laws or decrees which the legislative body made for each case. In Milo's case Pompey obtained a law, directing that out of four hundred whom he should choose from the senate, equites, or paymasters (*tribuni ærarii*), eighty-one should be taken by lot; and that after they had heard the cause, each party should challenge five from each class, reducing the number to fifty-one. The law also named a special judge, who filled no office; and it required the evidence to be taken first, during three days, then the cause to be argued, allowing the prosecutor two hours, and the defendant three. It is by some authorities maintained that this law, though intended for one case, was applied generally; and Tacitus‡ (if the treatise be his) gives it as one cause of the downfall of eloquence.

Nothing could tend more to impair the judicial system and to introduce abuses into all its parts, than the combination of the legislative with judicial office; and the practice to which it gave rise of making a law, or ordinance in the nature of a law, for each

* The opinion that they were not magistrates at all, but private persons, is fully refuted by C. Sigonius, *De Jud.*, ii. 5. The notion probably arose from confounding them with the *questores*.

† The dispute which frequently arises in our courts of equity as to who shall have the management of a suit, or the carriage of a commission, is properly a *divinatio*.

‡ *De Causis Corruptæ Eloquentiæ*.

case of any moment. Until the year 604 every thing was done by these special laws; each trial being directed by a particular order of the senate or the comitia. Even after the regular tribunals were established, the interference of legislative acts was perpetual. Now, if there be anything more undeniable than another in jurisprudence, it is, that the door for misdecision and injustice can never be opened more wide than by making rules for trying the particular case instead of general prospective regulations. In truth, such special laws are always more or less retrospective, and for this reason full of abuse and oppression. But if it were only that they are sure to be dictated by partial considerations, and not by enlarged views, this would be enough to prove them a fruitful source of error. It may safely be affirmed that a general law laid down by a body little entitled to respect, and even swayed by sinister views, would be a far better rule to guide both the parties and the judges, than a resolution taken by a far more trustworthy authority, upon the spur of the occasion, and to meet its peculiar exigencies. The allowing our Houses of Parliament to define their privileges by resolutions on each case as it occurs would be a far more certain means of working injustice to the people, and finally of destroying the independence of Parliament itself, than the adoption of a general rule of law to be administered by judges who do not take their opinions upon it from the facts of the case, but from previous and unbiassed consideration of the subject. The same circumstance in the nature and practice of the government, the union of executive and legislative powers in the same body, occasioned at Rome many trials for offences of a political nature especially to be had before the people, by what we should term impeachment. The general rule was that the crimes against the state, treason or sedition, and peculation, including extortion (*concussio*), alone should be tried before the comitia, and that all others should be tried by the ordinary judges, or by commissioners (*quæsitores*) appointed specially. But there are few offences which we do not find to have been tried by the people in the way of extraordinary or special inquiry (*cognitiones extraordinariæ*), and this not only in the earlier times, but at all periods of the commonwealth, though less frequently in the later. In 302, P. Sestius was tried in the comitia on a charge of murder, a body having been found in his garden (Liv. iii. 33); Fulvius, in 426, for adultery (Ib. viii. 22); Scantinius, a plebeian

tribune, in 527, for infamous and unchaste conduct (Val. Max. vi. 1. 7). After the establishment of regular courts in 604, the comitia ordered Vestal virgins to be put to death, though the pontiffs had acquitted them, and censured these pontiffs; and in 690 Silus was tried for endeavouring to seduce a matron by the offer of money (Val. Max. vi. 1. 8). This jurisdiction was exercised by the centuries in cases which involved the life or rights of citizens (capital cases). The tribes could only try for offences punishable by fine, though they sometimes, as in the case of Cicero's banishment, assumed also jurisdiction in the higher cases; and once, in that of Coriolanus, were authorised to try treason. The truth is, that from the union of legislative with judicial power, it was hardly possible to confine the different bodies to their several provinces. The senate itself, though only in later times, appears to have superseded the law, and sometimes, as in Catiline's case, to have awarded outlawry and capital punishment.

Certain forms were observed in the mode of trial, especially as to the citations and notices, and the time allowed before trial; but in the decision the same mode of voting was pursued as in making laws or choosing magistrates, that is, by centuries or by tribes, according as the trial was before one comitia or the other; and after the year 666 the vote was by ballot. Before that time, the comitia, which voted by ballot on all other matters, had voted openly in judicial proceedings.

CHAPTER XIII.

REFLECTIONS ON THE ROMAN CONSTITUTION.

Progress of Democracy—*Canuleius*—Address of the Patricians—Distinction of the Orders obliterated—New Aristocratic distinctions—New Plebeian body; their baseness—Operation of Party—Plebeians at different periods—Virtues of the old Plebeians; contrast of the new—Savage character; warlike habits—Massacres of *Marius*—*Cicero*—*Julius Cæsar*—Corruption of the People—Canvassing; Treating; Bribery—Sale of Votes; *Divisores*; *Ambitus*; *Sodalitum*—Bribery Laws—Unpaid Magistracy—Popular patronage and corruption—*Peculatus*; *Repetundæ*—Popular corruption—Factions; Civil War—Overthrow of the Commonwealth—Conduct of the Aristocracy—Aristocracy and Princes—Error of the Patricians—American War; Irish Independence—Roman Parties—Conduct of the People—Roman Yeomanry—Moderate use of power—Natural Aristocracy—Orders new moulded—West Indian Society—Aristocracy of Middle Classes—Power useless to an uneducated People—Checks on the People—Checks in general—Delay and Notice; English proceedings—Factionous men at Rome uncontrolled—*Catiline's* Conspiracy—*Cicero's* conduct—*Middleton's* error.

SUCH was the constitution which, from monarchical and republican mixed together, had become aristocratic, but in the course of less than a hundred years was republican again. In fact, after the tribuneship had become established, and the legislative right of the tribuna was recognised, there wanted nothing to bring about the change but the acknowledgment of the plebeians being entitled to hold the higher offices of the state, in like manner as their right to appoint inferior magistrates had been recognised. In the year 308, *Canuleius* having obtained the important concession of the right of marriage with the patricians, attempted the admission of the plebeians to the consulship; but matters were not yet ripe for so great a change, and the patricians evaded the demand by appointing military tribunes with consular power, to be chosen from both orders alike; and they created the office of censor, to be held by patricians alone, with a view to take a large portion of the consular power, so as to give the plebeians far less than the rest of the change appeared to bestow. But in 402, soon after the legislative power had been obtained by the tribes, the censorship was opened to the plebeians; they had some time before (397) obtained the *curule ædileship*, which with the prætorship had been created for the purpose of diminishing the consular jurisdiction; and in 417 the plebeians also

obtained the prætorship. The Licinian Rogations, too, which had been evaded chiefly by the appointment of dictators, and by the oppressive conduct of creditors, became really operative in 414. In 453 the plebeians were made eligible as pontiffs and augurs. So many of them became magistrates, or belonged to the equestrian order, that after the second Punic war in the 6th century there were more plebeian than patrician senators. The two consuls in one year, 581, were plebeian—the two censors in another, 622. So that the former distinction of the orders into patrician and plebeian no longer existed to any practical purpose, the only preponderance being that which is possessed by wealth, by illustrious birth, or by nobility—which consisted at Rome in having a right to statues, either of the party himself or of his ancestors, in consequence of their having filled curule offices.

A change had gradually, but entirely been effected in the composition of the orders. The commons (plebs), which at first were the inhabitants, small landowners born free, and generally of free parents, but of families originally foreign, and not of the original free and native Romans, had afterwards so increased in numbers, and so risen in importance, from the wealth of some and the merits, chiefly warlike, of others, that they both acquired great consideration in the community, and had many families distinguished by a succession of magistrates, and were thus ennobled, in the Roman sense of the term. It was between this great body and the patricians that the contest chiefly was carried on, and the success of the plebeians had been complete. But the more respectable portion of the plebeian body by degrees separated itself from the rest, and every one was ranked according to his own circumstances and those of his family, without any regard to whether he was born of a house that belonged to the one order or the other. The lower orders as distinguished from the higher—those who had come to fill the place originally occupied by the plebs, as contradistinguished from the patricians—were now either freedmen, or aliens unprotected by any patron, or the spurious issue of the better classes, or such as by their misconduct or misfortune had fallen into abject poverty; and, according to all the accounts which have reached us, a more base, profligate, and desperate multitude never existed in any part of the world. They differed almost as much from the commons of older times as they did from the more respectable order of citizens

in their own day. It was by appeals to their passions, by corrupting them and by exciting them, that the leaders of parties were enabled to use their numbers, armed as they all were, and habituated to war, to use them in the bloody conflicts by which the republic was first disgraced and then overturned. The parties which thus tore the community in pieces were now only in name patrician and plebeian; the leaders, and a great portion of those who joined them, were indiscriminately of all orders and all degrees, except the rabble; and the rabble forted the common stock from which those patrons drew their supplies of armed followers, mere tools or instruments in their hands. Principles, as never fails to happen, were adopted merely as the rallying cries or watch-words of faction; and though Sylla was of a patrician, and Marius of a plebeian and very humble family, the one cared as little for the preponderance of the senate as the other did for that of the tribes. But the sanguinary disposition of the whole people had a principal share in these enormities, and in the final catastrophe to which they led. It was the habit of constant war for centuries that formed this character, and the republican institutions had no share in producing it.

The original structure and character of the plebeian body was of a peculiarly estimable kind. It would be difficult to find any great vice in it save the fondness for war, naturally incident to a rude state of society, and which, at Rome, was perpetuated by the whole institutions being formed upon a military principle.—the work of the patricians, whose wealth and power depended mainly upon the progress of conquest. But the people were a body of very small landowners, whose lives, when not engaged in war, passed in cultivating their fields and gardens, in attending religious ceremonies, and occasionally partaking the amusement of rustic games. They may be said to have been a yeomanry living in and near a great city. Their frugality was strict; their course of life sober and chaste; their honesty and good faith unvaried; their fortitude exemplary; their reverence for the laws and customs of the state religious; and their veneration for their gods and the observances taught by their superstitions so habitual, that it became a part of their nature, and only wanted the lights of a purer faith to make it deserving of the highest respect to which the religious character can be entitled. Unhappily there was early inculcated upon their minds a belief that the glory of the community, by which was meant the extension of its dominions,

formed the only object worth pursuing, and that each man's virtue and his value was proportioned to the share he might have in promoting it. The whole people were soldiers; the whole country a camp; and the gains of the system becoming at first the sole property of the patricians, and at all times theirs in an extremely undue proportion, the people fought, and suffered, and perished for the profit, of this heartless body, much more than for any interest of their own. But the consequence of the system was to diffuse through all classes a hard and unfeeling disposition, a disregard of all suffering, whether of ourselves or of others, a contempt of death, and a familiarity with scenes of bloodshed, which never spread so wide or took so deep a root in any other extensive community. This inhuman character survived even to the most polished times. Slaves were not only tortured to extort their testimony, but killed for the pastime of their masters. Foreign princes taken in war were sometimes, as in Jugurtha's case, loaded with chains and left to perish in a dungeon, or put to more instant death as a part of the ceremonial at a triumph. The amphitheatres were filled by persons of all ranks and of both sexes to witness the destruction of their fellow-creatures by each other's hands or by wild beasts hardly more ferocious than themselves, and the audience frequently gave the command that the life of a vanquished combatant should not be spared. It was at a very late period of the commonwealth, and when Cicero had grown up to manhood, nay, not twenty-five years before his consulship, that the atrocious proscriptions of Sylla were perpetrated, and the far more horrible massacres with which Marius feasted his eyes for five days and five nights while on the brink of the grave; and the great moralist and patriot, himself of the most humane dispositions, though he repeatedly in his philosophical writings expresses, not very strongly, the feelings unavoidably raised by one of his enormities, yet hardly ventured even tenderly to blame them when addressing the people a few years later upon the subject of the massacres, and while their memory was still fresh in the minds of all; and he pronounced on another occasion, before the judges themselves, a magnificent panegyric upon the monster, without making the least exception of the scenes that closed his sanguinary life.*

* In the *Tusc. Quæst.*, v. 19, referring to the savage command of Marius, often repeated, to put Catulus, his companion in the Cimbrian victory, to death, Cicero uses the expressions, "*nefaria vox*" and "*scelerata*," and says that Marius, "*interitu talis viri*," overwhelmed the fame of his six consulships, and stained the close of his life. He says nothing of the thousands whom the wretch had made be put to death

Next to the sanguinary habits formed by their devotion to war, the corruption of the people by the abuses of their government was the most important of the remote causes of the commonwealth's destruction. The votes of persons in a low condition were necessary to the obtaining of the inferior offices through which political leaders rose to the prætorship and consulship, because these inferior offices were bestowed by the *comitia tributa*.*

before his eyes. In the *De Nat. Deor.*, iii. 32, he makes one of the speakers in the dialogue argue against the existence of a providence, from Marius dying in his bed at an advanced age, and a seventh time consul, after the man, "*omnium perfidiosissimus*," had, not massacred thousands, but ordered Catulus, "a man of the highest station," to be killed. In the *De Or.*, iii. 2, he mentions "*Marii cædem crudelissimam*," but it is after deploring his "*acerbissimam fugam*;" and in the *De R. P.*, i. 3, though he calls it "*acerbissima clades*," he adds "*principum cædes*," clearly showing what it was that he mainly regarded. In the oration to the people (*Post Reditum*, 8), he contrasts Marius's vengeance after his return with the peaceful conduct he meant himself to pursue, but without at all blaming him; and in the oration to the judges (20), pro Balbo, he describes him as the disciple of Scipio Africanus, and asks, "*Quæris aliquem graviores? constantiores? præstantiores virtute, prudentiâ, religione, æquitate?*" This was not above thirty years after the massacre. In what other civilised part of the world could such a man have been so spoken of in a court of justice, when the recollection of his atrocities was yet as fresh in the minds of all men, as if they had been perpetrated the day before? This speech, it must be recollected, was made in the year 697, long after the judicial body had been, by the law of Julius Cæsar, restoring Sylla's constitution (694), confined to the senators and equestrian order, excluding the plebeian magistrates (*tribuni ærarii*), and settling the administration of justice upon a regular plan, touching the age and qualifications of the judges, as well as the whole course of judicial proceedings taken. But the whole of their history is full of similar proofs how rooted in the minds and habits of the people were cruelty of disposition and carelessness of human life. No man in any other country could have treated Milo as a model of patriotism and excellence, and almost a martyr to his party, when it was admitted that, however the affray began, he had ordered his servants to put the wounded man to death, and that they had also killed the keeper of the tavern into which he had been carried. In no other country could one of Brutus's high character have published a speech in which he admitted the facts, and defended Milo on the ground of Clodius being a public enemy—a defence which Cicero had judiciously rejected, at the consultation of Milo's friends. The bare fact of Milo travelling with a band of gladiators, desperate ruffians proverbially ready for any slaughter, is an illustration of the manners of the age and nation. What respectable man could in any other place have had such an attendance? The savage tumult excited to oppose Cicero's return from banishment is another illustration. It seems to have made but little sensation, and caused no horror. Clodius and the actors in it were suffered to go unpunished—as might happen here at every trifling election riot;—and yet so many were killed in it that "the forum flowed with blood—the Tiber and the sewers were filled with dead, and such masses of these had never been seen in the city, except in Marius's massacres. Cic. pro Lep., 35 to 38. Julius Cæsar, himself the mildest and most generous of men, thought it no shame to avow that his wars cost 1,200,000 lives.

* In the latter times of the Commonwealth that which had been always the custom became required by positive enactment. One of Sylla's laws prohibited any one from being chosen consul who had not been prætor, or prætor who had not been quæstor.

But the centuries were to be gained as well as the tribes; for though the *comitia centuriata*, when opposed to the tribes, and when not divided among themselves, were so arranged as to exclude all the numerous and poorer classes from any share in the decision, yet when the question lay between opposing candidates of whatever order, the votes of all the four inferior classes became as important as those of the first, their centuries deciding when the smaller, but more numerous centuries of the wealthy could not agree. Thus was introduced, with the view of obtaining both the higher and the inferior offices, the practice of both courting, or as we should say canvassing, the multitude, and also of giving them the entertainments of public shows, which they so highly prized. To this was soon added the treating, or giving them dinners. Then came the distribution of provisions, and finally of money. Though these practices began with the tribes, they were extended to the centuries also. The law allowed much of this corruption; and one candidate (*Crassus*) gave an entertainment at which ten thousand tables were served, so that the whole people partook of it, and each also received a donation in money. The most open and profligate bribery succeeded; it became undisguised and universal. Votes were openly sold; tables or shops were opened in the public places for the traffic; there were persons who carried on the business of providing votes as undertakers; there were others (*divisores*) whose profession it was to distribute the candidate's money; others, as a kind of stakeholders, received it in deposit till the votes were given. Against this general corruption laws were early made, but were found unavailing. As early as the year 321 the senate proposed to put down canvassing, by prohibiting any one from appearing in the white or candidate's dress. In 395 the soliciting votes was strictly prohibited, in order to prevent it from being done at fairs and other meetings. It was at a later period made capital, that is, punishable with banishment (571 and 594), to purchase offices, that is, to bribe the electors (*Polyb. vi. 54*). In 604 tribunals were created solely for trying offences against the freedom and purity of elections. One to try bribery (*ambitus*), another to try acts of violence (*vis*), another to try combination or conspiracy (*sodalitium*), but all in vain. At one time the tribes made a law so severe that the senate judiciously objected, and desired it to be reconsidered, on the ground that no party would be found to prosecute, and no judge

to condemn. They therefore proposed, through the consuls, as more effectual, a mitigated law of fine and disqualification, with rewards to prosecutors and a prohibition of the traffic in votes; but the same year Sylla and his colleague were convicted of gross and extensive bribery, and removed from the consulship. The penalty of ten years' banishment for treating, giving shows, and hiring armed mobs, was then inflicted: first by a S. C., and then by a law which Cicero prevailed upon the comitia to pass. But so little did it check the practice, that soon after (A.U.C. 700) the violence of the candidates and their mobs prevented any choice of consuls for six months. Nay, to so great a height had corruption proceeded, and so hopeless did the cure of the evil appear, that Cato himself approved, on one remarkable occasion, of the senators raising a sum among themselves to enable the candidate whom they favoured for the consulship to outbid his adversary in bribing the centuries.*

It is not to be denied that much of the corruption of which we have been speaking must be traced to the pernicious practice of allowing the magistrate's emoluments to depend, not upon an adequate provision directly and avowedly made for his support, but upon other advantages to which he might look as incidental to his office. The magistracies, through which men passed to the prætorship and consulate, were rather expensive than lucrative, from the theatrical exhibitions, which were part of the *Ædile's* duties, and the largesses to poor citizens, expected from all office-bearers. The fortunes made by prætorian and consular commands, and especially when the provinces became numerous and wealthy, formed the great temptation both to avarice and ambition, and these were regarded as the sure source of wealth and power. The profits of the *quæstors* were in all probability also considerable. It was to obtain such prizes that the fortunes of the patricians were expended, and that debts were incurred, as a speculation certain to repay all that might be advanced, provided the bribing was successful in securing the place. †

* Julius Cæsar had promised a sum to each voter, in order to secure the election of a colleague, whom the senators expected to become his tool. They therefore offered the same sum on the part of *Bibulus*.

† M. Beaufort (*Rép. Rom.*, tom. i. p. 428), while he admits that "all ancient authors keep a profound silence on the emoluments of each office," has no doubt that each was provided with an ample salary. The mere fact of no mention being anywhere made of this seems strongly to negative its existence—the passages which he cites for the

The practice of bribing appears to have kept exact pace with the advance or abatement of the patronage in the hands of the people. Julius Cæsar recommended both consuls, and half the other office-bearers, and substantially named them: bribery became less frequent. Augustus restored the election to the people, and with it bribery increased; insomuch that, finding the punishment of five years' disability with a pecuniary forfeiture ineffectual, and being desirous to prevent it—at least in the two tribes in which he was enrolled—he could only do so by himself distributing as much money among the members of those bodies as the candidates offered. The same state of things continued until Tiberius gave the elective power to the senate, which was then only exercised nominally, and his successors avowedly filled up all offices themselves. Bribery was now confined to the provincial towns (*municipia*) and colonies, where the people still appointed.

The corruption of the people extended to those in the upper classes. The peculation (*peculatus*) and extortion (*repetundæ*) of persons in office became universally and openly practised. The trials before the comitia tributa, which frequently took place, and the erection of special tribunals A.U.C. 604 to try these offences, had little effect. The punishment, indeed, of restitution, sometimes double or treble, which always till the latter end of the commonwealth was inflicted for these offences, appears not to have stamped them with any infamy. Lentulus, two years after his conviction of extortion in the year 606, was made censor, to watch over the morals of the people and the purity of their magistrates. Under the empire the punishment was exile, and the vigour of the government appears to have somewhat checked the practice. No society can be conceived more corrupted or more hardened, of principles more loose, or of feelings more despicable and callous, than that of Rome towards the termination of the commonwealth. It only required such desperate leaders as did not long delay appearing to destroy the whole system, by arraying against each other bodies of a rabble whom the habits of war had made as cruel as the

most part would seem to authorise an opposite conclusion. Thus, Livy saying that the consul's camp equipage was furnished by the state, if it proves anything, is rather against the supposition of a large salary; and as to Cicero living in splendour, though born to a small fortune, and refusing all governments, no one can be ignorant of the vast profits which he made by the exercise of his most lucrative profession.

conflicts of faction had rendered them turbulent, and the unprincipled acts of their patrician superiors had taught them to be venal.

The hiring soldiers from the rabble of the city was first practised in Marius's time, and had the most fatal effect upon the constitution. Nothing tended more to maintain the conflicts between the two parties which divided the community—that of Sylla or the senate, and that of Marius or the commons; and to their civil wars succeeded the more regular and sustained contests between Pompey and Cæsar. The state was now exhausted by the sanguinary game of the factions; foreign conquests rapidly increased, arming the leaders with new treasures and new forces, and no resistance was made to whatever chief, having gained the greater military power, chose to use it for establishing his own dominion on the ruins of the republican constitution. The forms of the old government were alone preserved: Julius, and after him Augustus Cæsar, obtaining the votes of the subservient senate and comitia, were created sometimes consul, sometimes perpetual dictator, and ruled under those titles, and with the assent of the public bodies. But their real power was wholly derived from the troops in their pay, and they were succeeded by princes, who, ruling by the same means, extinguished the very name of liberty, and practised a tyranny which has in all ages been regarded as the most profligate and detestable ever known in an advanced state of society.

The successive changes in the Roman government, and the struggles which first led to them, then were increased by them, may easily be explained by attending to the operation of the aristocratic principle and the improvident conduct of the patrician body. In the earliest period of the monarchy the power was in the hands of the whole free native people, with an elective chief, and no plebeian body having yet been formed, he could not find a balance to the power of the people, that is, the patricians. The Constitution was now more republican than monarchical; certainly it could with no accuracy of language be called aristocratic. When the plebeian order became numerous in proportion to the patricians, the latter retained their ascendant, and notwithstanding occasional attempts of the king to court the commons, he did not succeed in curbing the privileged body; the government was now aristocratic. The patricians and plebeians

combined to dethrone the king, and for a short time acted in concert; but the domineering spirit of the aristocracy soon broke out into new excesses, and their power being much augmented by the revolution, their oppression of the poor, but numerous and increasing, order became greater than ever. They committed the error, fatal to all privileged classes, of forgetting that while their own numbers are nearly stationary, and their progress in wealth is limited and slow, the mass of the community increases rapidly, and its wealth becomes proportionally extended; but they still more omitted in their calculation a circumstance peculiar to Rome, that the whole nation being military, and all its occupation war, the force of the multitude must needs become overwhelming, and that any attempt must be hopeless to deprive them of their share in those conquests which were made by the force of their arms. The patricians were bent upon continuing to govern the country as exclusively after the commons were reckoned by hundreds of thousands, and the territory had stretched over and far beyond the neighbouring districts, as they had been suffered to do when the plebeians were not much more numerous than themselves, and the city and suburbs were the whole extent of their dominions. The apprehension of the commons gaining more power by whatever was bestowed upon them, whether of the public lands or of political privileges, made the patricians adhere the more tenaciously to their exclusive rights, each concession being deemed not only an immediate diminution of their own power, but the means of still further lessening it; so that it might be impossible to tell where the rise of the lower, and the decline of the superior class, would end. This alarm at encroachments operated, as it ever does, to prevent them even from abandoning rights of no value to themselves, and allowing privileges that did not come into conflict with their own; because such changes, by augmenting the popular influence, would lead the way to more hurtful sacrifices being extorted.

In acting upon such views an aristocracy differs not materially from a prince, except only that it is relieved from the checks of fear and reputation which individual responsibility imposes, and except also that a body often is swayed by violent feelings which the contagion of numbers embitters while it propagates them. But in another respect the conduct of the body is always worse than that of the individual. Oppression, where it

tends to no end, is apt to be exercised by a number of persons more harshly because they come personally more in contact with the objects of their hatred, or jealousy, or dread. At home, accordingly, the patrician was filled with haughty contempt and fierce dislike of the plebeian; and the law which he had made enabled him to gratify these feelings not only against the body, but in crushing and tormenting individuals, his debtors. A single ruler becomes the more cruel from fear, knowing that he stands alone with the community against him; but a minority, a select privileged few, not only act under the influence of the same dread, and are equally impelled to make up by terror for the inequality of their natural force; they are also the more excited to whatever may intimidate their adversaries by being always set in opposition to them, always matched and balanced against them, and consequently acting under a constant sense of their own dangers from the conflicting power being let alone.

The Roman aristocracy was marshalled in a more especial manner by its powers being exercised, not in electing rulers, but in ruling of itself. When the curiæ and their more select body carried on the government with the king, they were the whole patricians in a body. When the commons had their own assembly the opposition of the two orders became more regular and more fierce, and the pretensions of the patricians were the more peremptory, and their domination the more overbearing. The same system of the ruling power being exercised by the whole body had another most fatal effect: it prevented the wise foresight and virtuous moderation of a few leading men from having its due weight with the bulk of their order, and gave to the course pursued that character of violence, impatience, and irreflection, which too often belongs to the proceedings of the multitude. The inevitable necessity of concessions being granted too late to compulsion and through fear, if they were not in due season given with a good grace, never once appears to have been present to the patrician's mind. He always thought and acted as if his order could retain its predominance, and as if the plebeians were never to increase in power. A single ruler or a select body of counsellors would, in all probability, have granted some share of the public lands in the time of Spurius Cassius, but the patrician body put him to death as a traitor for the bare proposal. When Licinius renewed the attempt it was evident that in the end some measure of the kind *must* be

carried, and almost as evident that by timely concession much of the hostile feeling might be allayed which both filled the state with sedition, put its existence once and again into jeopardy, and ended in far more power being given than any one at first thought of demanding. But the patricians were inflexible, and when compelled to yield in outward appearance, defeated the measure by such chicanery as brought on new struggles and higher demands. It was only in times of great public danger, or by proceedings which amounted to open resistance, that the commons could gain any of their rights: by refusing to serve at one time when there was a formidable war, or by leaving the city in a body at another critical period. The patricians never acted as if the people were daily growing in strength, and themselves stationary; they forgot that it is as impossible to keep a whole nation in pupilage, as to keep a man in leading-strings; they were not aware that their true interest required them so to treat the people while under their control, as to postpone the period of their emancipation by the influence of kindly treatment, and to secure a mutual good understanding when at length the period should arrive.

If, in the American war and in the conflict with Ireland, there had been only a prince and his ministers, without a popular assembly to consult, it cannot be doubted that for a while the same results would have followed among ourselves. But it may be reasonably questioned whether anything but the bitterness of contending bodies could have so long maintained the policy which lost America long before the separation became necessary, and with hostile feelings established almost as a part of the national character on both sides of the Atlantic; and it seems equally probable that the independence of the Irish parliament would have been granted, and the elective franchise conferred upon the great body of the people, without waiting until the volunteer army created by the necessities of the American war forced the one measure, and the difficulties of the French revolution obtained the other. If there be any doubt whether these things would have been better without a governing body, such as the British parliament, it only can arise from the influence of the people affecting its deliberations, and being exerted—as upon full consideration it is always likely to be—in the right direction, although at first joining in the prevailing errors. In proportion as the parliament approached the constitution of the patrician body, that is, an aristocracy uncon-

nected with the oppressed orders (in this case the people of the colonies and of Ireland), in the same proportion was it likely to misgovern by giving scope to its jealousy of the other classes, and its desire of monopolising all power.

The consequences were produced at Rome, which must always ensue from the same exclusive and engrossing spirit. The two orders grew up into a settled and a mutual hatred; and when the people had gradually attained its full strength, it obtained not merely a share, but the preponderance in the government, so as to establish a powerful and most turbulent democracy. Under this the patricians suffered constant mortification; and although the natural influence of their wealth and attainments preserved them from being trampled upon and crushed, as they would in their former state have overpowered the commons, they had less than their just and natural influence in consequence of their former conduct, and the mutual hatred to which it had given rise. If they had yielded and conciliated betimes, the government would still have been republican, but with a control in the hands of the upper classes which must have both improved the form of the constitution, and prevented the factious excesses that proved its ruin. The hatred of the two orders, which survived their distinct existence, ranged the different parts of the community against each other, when the terms patrician and plebeian had entirely lost their original sense; and gave rise to those factious contests which produced the massacres, proscriptions, and civil wars that destroyed at once the character of the nation and its free constitution.

The conduct of the plebeians throughout the struggle, that is, in the age when the character of the body was respectable, and its original structure remained, clearly proves how safely the patricians might have trusted to the influence of the Natural Aristocracy for securing to them an ample share of authority in the state. The moderation of the popular proceedings has often been commended, and it has been deduced from their sober habits and honest, conscientious nature. That they possessed many of the qualities which distinguish an uncorrupted yeomanry, little advanced in knowledge any more than in refinement, may be admitted, and, among other qualities, the modesty and even humility incident to that character, and the aversion to violent courses, although, from living in crowds, habits of combined action were formed, which country people in general have nothing of. But the principal cause of the

moderation in question was the natural influence of the patrician class, from wealth, rank, habits of command, eminent services, and superior information. Their oppressions drove the commons to resistance, but a little concession soon appeased them, and then the Natural Aristocracy resumed its influence. We have many remarkable instances of this. It may suffice to cite two. When the struggle for the consulship had so far proved successful that as a compromise consular tribunes were allowed to be chosen from both orders indifferently, the plebeians, without any exception, chose patricians; and it was nearly half a century (from A. U. C. 309 to 353, when Licinius Calvus was chosen) before they ever availed themselves of the right to choose a plebeian. They first were allowed to choose a consul from their own order in 387; from that time both consuls might have been plebeian, though only one could be patrician. Yet nearly two centuries elapsed before the commons chose both from their own body (581). So the censorship was opened to them in 402; but it was not till 622 that both censors were plebeian. The influence of the patricians was alike powerfully felt in the elections to the other offices which were open to both orders. Tribunes and plebeian ædiles they could not be by law; but curule ædiles and quæstors were chosen by the tribes alone; and notwithstanding the power of mere numbers in that assembly, the patricians were as frequently chosen to fill these places as to hold the higher offices, the appointment of which belonged to the centuries, with whom numbers had comparatively little sway. Instead of wisely and virtuously trusting to their natural influence, the patricians maintained the contest with the people to the last, and when defeated, employed their wealth in corrupting the multitude, and their authority, their force, their example, in exasperating it, setting man against man, family against family, till the extinction of privileges so grievously abused became, if not a public benefit, certainly no injury to mankind.

But if such were the changes which the plebeian body underwent, we may rest assured, although history only gives general indications of it, that the admission of the plebeians occasioned a separation of the patrician party into those who still maintained its exclusive privileges, and those who, more moderate in their opinions, had no repugnance to form with the more eminent plebeians a new aristocracy. The high or old patrician party

continued the struggle, as such bodies always do, long after it became hopeless. They had the augurs with them, for those places were still exclusively patrician, and instances are not wanting of the most barefaced partiality shown by them in furthering the views of their party. Thus, when Cornelius had named as dictator Marcellus, who, though consul some years before, was of a plebeian family, the augurs pretended that the auspices were wrong taken, and declared the nomination void, they having been at Rome and the appointment made at Samnium. It was only in the process of time that this difference among the patricians gradually wore out, and the new aristocracy was established. While it lasted the senate was always more moderate and rational than the order at large.

The transition of parties and orders from their original state, of the patricians on one side and in one class, the plebeians on the other side and in the other class, into that state in which the natural aristocracy was formed, and separated the wealthier and higher born from the inferior classes, was of course gradual, and only abolished the distinction of patrician and plebeian, substituting a new arrangement for it, in a long series of years. The steps must have been the same as in all such cases; and the principal one always is made by the inferior class itself. The habitual respect for the upper class, and the desire of belonging to it, or if not of belonging to it, of being connected with it, and of being distinguished from the rest of their comrades, is the powerful engine in bringing this change about. The class below the privileged class always the most highly prize those privileges, and most eagerly desire to separate themselves from those below them, and ally themselves with those above. Hence the more wealthy and powerful among the plebeians were at all times desirous of likening themselves to the patricians, and no sooner obtained access to patrician offices than they engrossed these almost as much, and excluded the bulk of their order almost as entirely from them as the patricians had before done with reference to the whole plebeians. The barriers being now removed which separated the two orders, first by intermarriages being allowed, and then by the magistracies being opened, the plebeian families whose ancestors were distinguished by having held offices, or by any other eminence in the state, formed, together with the patricians, the aristocracy of the state; and such of the patricians as fell into bad

circumstances, or became discountenanced for bad conduct, or for conduct of a mean description, such as engaging in occupations that were thought degrading, were numbered among the lower orders, notwithstanding their birth. Supposing slavery in our colonies had been gradually abolished, and the distinctions of colour had not separated the descendants of the master from those of the slave, there would in the course of ages have been formed a class of society which would be the higher or aristocratic order, and the lower order would consist of the descendants of slaves and freemen indifferently. Nor could any one fix the time when this distribution of rank by natural aristocracy had succeeded to the artificial distinction of slave and free. The oppression of the more numerous body at Rome by the new aristocracy, composed of the patricians and higher plebeians, was just as great as it had ever been when exercised by the patricians alone. So would the West Indian aristocracy oppress the inferior classes in the case supposed. Indeed the maltreatment of their own order by the upstart plebeians, and by the descendants of West Indian slaves, would probably exceed that of the old aristocracy.

It must however be observed that the structure of the government is not answerable for evils of this class. The oppression of the patricians while the plebeians were excluded from a share of the government, must be laid to the account of the aristocratic constitution, the artificial aristocracy. The continuance of the same oppressions exercised by a body somewhat different, after the plebeians had obtained not only their share but a preponderating influence in the government, was owing to the natural influence of wealth and rank, the natural subserviency of the inferior classes, and, as parcel of that subserviency, their natural tendency to covet such distinctions, and to trample upon those beneath them. It is not that any wonder can ever be felt at the more eminent persons in the community rising to the top; or that any one can suppose it possible for the bulk of the people to confide their affairs to persons of their own class. Whatever be the structure of the government, the higher stations must generally, almost universally, be filled by the upper classes, let the power of appointing to them be ever so absolutely vested in the people, and without any rule of exclusion. This is the law of our nature. But the Roman people disregarded their own interests in the choice they made of magistrates, and the support they gave to measures.

They might have selected from the upper classes, and excluded all those whose station disqualified them from holding power, and yet have consulted the true interests of their own order, and of the state. Of this they were incapable by their ignorance. They had obtained power, but they used it to further the interests of their leaders. They had obtained political power before they were politically educated, so as to exercise it beneficially for themselves and for the state; and the acquisition only proved hurtful to both. The control over their superiors which they possessed, the power of providing for their own interests, was almost entirely thrown away; it enabled them, but did not dispose them, to pursue the course most for their own benefit. They were the mere instruments in the hands of others, and the recovery of their rights availed them nothing.

A survey of the constitution of Rome is calculated to suggest another general observation respecting the people, as important as that on which we have been dwelling, relative to the aristocratic body. The exertion of the popular influence, such as it was after the tribunes were established, and after the universal power of legislation and of government became vested in the tribes, would have been wholly incompatible with the existence of any other power or privileges in the state, and must have led immediately to the supremacy of the multitude, but for the operation of the numerous checks which the forms of proceeding and rights of various functionaries provided. Now these checks all resolved themselves into gaining time for more full deliberation; but this was found sufficient in most cases to prevent serious mischief, partly because the opportunity was thus afforded for the upper classes exerting their natural influence, and partly because the people themselves had certain feelings and principles deeply implanted in them both of a patriotic and of a superstitious kind, which produced their effects when time was allowed for their operation. The force of these feelings and principles secured at all times the observance of forms and a deference to official privileges. The most furious assembly might be stopped short in its proceedings by the warning of a magistrate, or of an augur; and the same habits of thinking in most cases enabled the superior orders, or the reflecting persons even of their own, to turn them away from extreme courses before any irreparable evil had ensued. Whoever doubts the safety of intrusting a large share of influence to a well-edu-

cated people, may do worse than reflect on the safety with which for many ages the absolute power of the Roman tribes was enjoyed by them, with no better substitute for sound political information than their ancient hereditary prejudices in respect of civil and religious customs.

But an examination of the Roman government is also fitted to place in a strong light the use of checks, and to show how erroneous the arguments are of those who contend that every thing which a body has the power to do will be done. The various provisions of the constitution operated by delay, and the delay was in most cases sufficient, because all was not done that could legally be done, because reflection had its free scope, and because compromise and mutual concession was preferred to extreme measures. Whoever has considered the effects produced by notice both in our courts of law and our legislative assemblies, will at once perceive how much they resemble the effects of the delays at Rome. In courts, the consequence of notice is, that parties cannot be taken by surprise, and that an application to undo what had unfairly been done may be unnecessary. But in Parliament the advantage is greater; for the delay interposed both prevents many things from being attempted by individuals or by parties, which might on the spur of an occasion have been successfully tried, and induces the body itself to adopt a resolution very different from that which might at first have been taken.

But there arose out of the conflict of authorities at Rome and the influence possessed by bodies as well as by individual magistrates, one most pernicious mischief, affecting at all times the security of the state, and which, with the always sanguinary and latterly corrupt character of the people, finally effected its ruin. There was no effectual control over dangerous men, men of turbulent ambition and profligate character, and who might be disposed to seek their own aggrandisement in the confusion of public affairs. In earlier times such risks were avoided, sometimes by acts of sudden and irregular energy on the part of the magistrates, and sometimes by the appointment of dictators. When the people would no longer submit to the dictatorial authority, the senate by its extraordinary resolution *ne quid detrimenti*, endeavoured to supply its place, and to make it safe and regular for magistrates to act as they had formerly done illegally and at their own peril. But still the influence of the different bodies, and of the different

orders in the state to which persons belonged, was sufficient to prevent the law from taking its regular course, even when the most atrocious conspiracies had been detected. The suddenly putting to death Catiline's associates, after they had been clearly detected and had indeed confessed their treason, was an act of vigour beyond the law: it was certainly done by the consul and the senate in breach of the forms of the constitution; and indeed Cicero was afterwards impeached for it. At the moment, it was rendered practicable by the state of public feeling on the recent discovery of the plot. But so little could Cicero reckon upon this frame of mind lasting, that he had the prisoners strangled on the same night on which he had, with considerable difficulty, obtained the vote for their punishment. And as for the principal criminal himself, Catiline, not only had no attempt been made to seize his person and proceed against him, but the whole efforts of the consul were directed to make him quit the city, of which the gates were thrown open to favour his retreat, although it was ascertained that he was going to head a rebel army for the support of his accomplices at Rome, and although he stood so clearly convicted by his own furious declarations, that none of the senators would degrade themselves by sitting near him in the same part of the house. There was no want of vigour in the magistrate, any more than of proof against the criminal; but there were large bodies of powerful men with whom the one was connected, and of whom the other was in prudence obliged to stand in fear.*—The blessing of an escape from the perils of such a terrible state of things is well worth a large sacrifice of power to all the orders of a community.

* Middleton's attempt to turn the proceeding into a pauegyric on Cicero's skill is as great a failure as his endeavour to place him on a level with Demosthenes in eloquence, and almost with Lucretius in poetry. It is plain that he had a sufficient case against the criminal, if he had only had a tribunal of magistrates before which to use it. But the same state of parties and of manners which made it safe for Clodius to insult him by his mob in the streets, and impeach him before the assembly of the tribes, for saving the country, and only five years after this service—which made it also safe for men like Crassus and Julius Cæsar to intrigue almost openly with desperate conspirators, and for patricians of the highest rank to set on men almost as noble as themselves to assassinate the first magistrate of the country—rendered it not merely dangerous but wholly impossible to put the law in force against those conspirators and assassins, unless at particular moments, and in peculiar combinations of circumstances, which deprived the wrong-doers of all support from any considerable body, and thus armed the law with a transitory and unusual vigour.

CHAPTER XIV.

GOVERNMENTS OF GREECE—CRETE—SPARTA.

Greek Authorities—False Chronology—Ages of the Historians—Early History—Constitution of Crete—Periæci; Clerotes—Pure Aristocracy established—Resistance—Federal Government established.

Constitution of Sparta derived from Crete—Opinions of Polybius and others—Periæci—Helots—Lycurgus—General Remarks—Authors—Classes of the People—Proofs of this Theory—Hypomeiones; Homoioi; Mothaces—Tribes; Phylæ; Obæ—Castes—Morse—Errors of Authors—Kings or Archagetsæ—Rules of Succession—Senate—Ecclesia—Mode of Voting—Harmosynæ; Homophylaces; Harmostæ; Hip-pagretæ.

THE early history of Greece is, like that of Rome, and indeed of every other nation, lost in obscurity. The first historians whose writings remain, lived even longer after the events which they describe than those of Rome; and there seems no reason to believe that they had any other authority for the stories which they relate than the old traditions of the country. The chronology of Greece is, accordingly, much more uncertain than that of Rome; and the impossibility of the dates commonly given by ancient writers is more apparent. Thus they make the foundation of Athens 1556 years before the vulgar era, and the reign of Theseus 1334. But Sir Isaac Newton has adduced reasons for believing that Athens could only have been founded 1080 years, and Theseus have reigned 968 before Christ. Of these reasons it may suffice to mention one. By the common account, nine successive kings must have reigned at Athens thirty-five years each upon an average, and the thirteen archons who followed them twenty-seven years each;* nay, in Sparta, nine kings after Aristodemus are reported to have reigned forty-one years on an average—a thing contrary to all experience, and which in that state of society may confidently be pronounced impossible to have happened. But supposing the Newtonian account to be taken, which brings those early events much nearer the time of the historians, we shall still have Thucydides living above five centuries after Theseus, and six

* C. Sigon, *De Rep. Ath.*, i.—C. Sig. *De Ath. Temporibus*—J. Meursius (*De Fortunâ Ath. and Atticæ Lectiones*) points out many errors and discrepancies of ancient authors.

and a half after the foundation of the city, Polybius nearly nine centuries, Dionysius above ten, Plutarch between eleven and twelve, after the foundation; and after Theseus all later than Thucydides in the same proportions. So with respect to Sparta, Herodotus wrote above two centuries and a half, Xenophon nearly three, and Plutarch nearly eight, after the most recent time assigned as the age of Lycurgus. These authors and others, however, do not differ so much with each other upon the more important matters as the Roman historians: hence there is considerably more reliance to be placed upon the traditions which all agree in recording; and we may the more safely conclude that they had some foundation in fact. The most important portions, too, of the subject are those so near the times of the historians, that we have every reason to trust their accounts where they agree. Xenophon describes the legislation of Solon at the distance of only a century and a half; and though much further removed from Lycurgus, yet the Spartan institutions had lasted to his own times. It must however be observed, that there were many things in the origin of that Spartan system and the early history of the state generally, almost as little known in those days as in our own. This obscurity arose from the Spartans having no writers of any kind, and from their intercourse with their neighbours having for some ages been extremely limited.

The structure of the government in the Greek states, though necessary to be examined, does not afford matter of such important consideration, nor is it, with the exception of Sparta, of so singular and anomalous a kind as the Roman constitution. About the middle of the tenth century before Christ the troubles in Palestine appear to have occasioned an emigration of Phœnicians, who were in a much more civilized state than the Pelasgians, the original inhabitants of Greece. Sir Isaac Newton considers this to have happened in king David's time, and his opinion has met with general approval. These emigrants brought with them to Greece and the islands the knowledge of many arts formerly unknown in those barbarous districts; and they founded Thebes in Boeotia, beside establishing the government of Minos in Crete, where certainly the first general system of polity known in Greece was instituted. Its object was purely military, all its arrangements being framed with a view to train up warriors from the earliest age, and to place each member of the community under the strict discipline of the law, in

the whole conduct of his life. The supreme power was lodged in a king, or military chief, and ten magistrates, called *cosmi*, chosen yearly, it does not appear how, from certain families only, and a senate appointed for life from those who had been *cosmi*. All laws and treaties were in the name of the *cosmi* and city or state; and one of the *cosmi*, thence called *eponymus*, gave his name to the year. There were assemblies of the people, but without any other power than simply to accept or reject the propositions of the senate and *cosmi*. The *cosmi* were the executive government, both civil and military, when there no longer was a king appointed; and the king appears to have been hereditary as regarded the family, but with an election as regarded the person. The election was in all probability by the senate;* or if the people were called upon to interfere, it was only as in the case of new laws, to sanction what the senate proposed; but the choice of the senators is said to have rested with the *cosmi*. Aristotle decidedly blames the aristocratic principle of confining the choice of officers to certain families. In truth, the government appears to have been entirely aristocratical. But as it was also military, and as the whole pursuits of the people were subordinate to their warlike occupations, a class of persons in a meaner and in a servile condition, called *periœci* (περιοικοι), from inhabiting the neighbourhood of towns, cultivated the soil. They were considered so far the property of the state that they could not be separated from the soil, and they paid a portion of the produce. These *periœci* were evidently the descendants of the original inhabitants, whom the Phœnician settlers had subdued. The slaves, who were either prisoners of war or their descendants, formed a separate class, and were always treated in Crete with much greater humanity than in most of the Greek states. They were chiefly distinguished from the free inhabitants by being incapable, like foreigners, of political privileges, and by being restrained from gymnastic exercises and the use of arms.† It was a part of the civic economy that all the citizens lived in public; the members of each of the tribes into which the people were arranged dining always at the same table. The education and training of all

* U. Rinius, *Vet. Græc. (De Repub. Cret.)*.—J. Laurentius, *De Rebuspublicis*, cap. i.

† It is extremely incorrect to confound, as some authors have done, the *periœci*, or tributaries, and slaves, *clerotes*, so called from falling to the lot of the conquerors. They are sometimes called *chrysoœtes*, from being purchased.

children devolved upon public officers appointed by the state, so that the whole community was formed into one great family.

When the government became purely aristocratic, by the whole power being vested in the *cosmi*, there were frequent insurrections, occasioned by their tyranny; and we are told that the laws did not punish sedition, because some such check was necessary to counteract the extensive powers of the magistrates. This most clumsy contrivance is censured justly by Aristotle: but it seems difficult to conceive how any government could have existed in such circumstances; and the probability is, that the notion of resistance, when unsuccessful, going unpunished, may have arisen from the frequency of its occurrence, and the consequent mutual forbearance of the different parties which divided the community. The principle of a communion of goods appears to have so far been established, that the public revenue derived from the heavy tribute or rent paid by the *periceci* was employed to support the expense of feeding the whole citizens and their slaves at the public tables; but this arrangement was one of the first to fall into disuse.

It is wholly uncertain at what time there ceased to be kings in Crete; the last is said to have been Idomeneus, who was at the siege of Troy. But this is plainly a fabulous portion of history. At whatever time the royal office ceased, the unity of the government appears soon after to have terminated; and the island was divided into a number of petty communities, or cities, each under the government of *cosmi* and a senate. The most powerful of these states were the Gnosians, Gortynians, and Cydonians. The two first were in a constant state of rivalry and hostility, and to this the independence of the lesser communities was mainly owing. These formed alliances among themselves, offensive and defensive, and communicated to each other the rights of citizenship, *isopoliteia*, which implied the full power of possessing land in each other's territory, of marrying, and of having their laws executed upon fugitives;* in short, all but political privileges. A central council was ultimately established, which determined the quotas to be furnished by each state, and apportioned the shares of the booty taken in war according to the relative numbers of the citizens, reserving to the government of each a tenth of

* Where a citizen of one state had injured the citizen of another, he was tried by judges equally taken from both communities—*de medietate*, as the English law terms it.

its portion. The uniformity of the accounts respecting the Cretan government justify us in concluding that it was generally of the nature described, and that it had assumed a regular form much earlier than any other system of polity in any part of Europe.

It cannot reasonably be doubted that from Crete the government of Sparta was derived.* In the earliest times the Laconians, an invading body of Dorians from Thessaly, lived in tribes or towns, under chiefs or kings, whose authority was precarious and ill-established, the most powerful portion of each community being the landowners. A kind of union of the whole had, however, been formed. In consequence of the kingdom being left by one of these chiefs (Aristodemus) to his two sons, Eurysthene and Procles, there continued always to be two kings, one of the family of each.† They are said to have divided the country into six districts, and placed a chief over each as their deputy,‡ residing themselves at Sparta, the chief town. The original inhabitants, after being at first only made tributary, were reduced to slavery in consequence of a revolt, and the free inhabitants of the country (*periœci*), though holding inferior privileges to those of the chief towns, were allowed to fill public offices. The slaves were called *Helots*, from Helos, one of the towns in which they lived, and which had led the insurrection.

Nothing could be more feeble and disjointed than such a government; and particularly an executive power thus consti-

* Polybius (lib. vi. c. 45) denies this; but the reasons which he assigns appear insufficient to support his proposition. He relies only on the great inferiority, as he considers it, of the Cretan to the Spartan institutions in many particulars; but this is inconclusive. The similarity in such peculiar institutions as the *cosmi* and public tables seems to justify the opinion of Plato, Xenophon, and others who trace the Spartan to the Cretan government. This question is fully and judiciously discussed in St. Croix's learned treatise, *Des anciens Gouvernemens, Fédératifs, et de la Législation de Crète*, p. 413 et seq. It is plain that Polybius had a violent prejudice against the Cretans, whom he even accuses of cowardice and inaptitude for war, notwithstanding their vile practice of selling or hiring their services to foreign nations, and being sometimes found, as Livy has recorded, fighting on both sides. An equal instance of national prejudice on the same subject, though it take an apologetic and not a vituperative turn, is to be found in Haller's explanation of the same baseness in the Swiss. He has the courage to assert that it comes from the desire of maintaining martial habits, and learning the improvements in the art of war!

† U. Emmius, *Vet. Græc. (Rep. Lac.)* Aristodemus is represented as one of the Heraclidæ who overran the greater part of Greece, and reduced the natives in some places to absolute subjection, in others to a divided property. Laconia is said to have been his share.

‡ Strabo, viii.

tuted; and the dissensions of the kings, with the factious dispositions of the landowners, their appeals to the multitude, who were left without any regular share in the government, the number of slaves, who carried on all the agriculture of the country, and being subjected to cruel treatment were ever ready to revolt when a foreign war made such a movement the more dangerous, all exposed the state to such risks of utter destruction, that the adoption of some new system seemed necessary to preserve its existence. Fortunately Lycurgus, who succeeded on his brother's death to the joint crown, but who, with great magnanimity, refused to take it upon learning that the widow was with child, retired into Crete during some civil commotion, and being invited by both the sovereigns and the people to return, brought back with him a full knowledge of the Cretan system, upon the principles of which he persuaded his countrymen to new-model their own. The common chronology places this change in the 884th year before Christ; but Sir Isaac Newton, upon better grounds, dates it in the year 708.* As constantly happens, all the institutions of the country have been ascribed to Lycurgus; whereas there can be no doubt that he preserved many of former times, and that some were added by succeeding statesmen. It is however certain that the extremely artificial and unnatural system, of which he was the principal founder, took such hold as to last an extraordinary length of time, and produced effects upon the character and habits of the people which distinguished them from all other nations. The desperate state of anarchy into which the community had fallen, and the dangers to which all were exposed from their neighbours, as well as their own countrymen, perhaps still more from the slaves, or conquered race, appear to have combined with the superstitious reverence for the oracles consulted by Lycurgus, to make the people adopt his plan; and if once fully adopted, the more it was in opposition to the natural order of things, it perhaps had the better chance of taking deep root, and becoming permanently established. There are some parts of the system almost incomprehensible; there are others which must be regarded

* J. Meursius (*Arcopagus*, cap. 3) makes Lycurgus contemporary with the beginning of the Olympiads, which, according to Newton, is the year 776 n.c. Aristotle, Pausanias, and Plutarch give the same date. Xenophon places his age much earlier; but the preponderance of authority seems in favour of the reign of Charilaus, who was the sixth from Procles, and flourished about 700 n.c.

as doubtful, because of the conflicting accounts that describe them; there are not a few which remain imperfectly stated; and there are several which cannot be believed to have existed, because they are directly repugnant to others vouched by the same authorities. But it will be expedient in the first place to give the account in which the greater number of ancient writers agree, which may therefore be supposed to represent something resembling the Spartan constitution, and the main portions of which may probably be trusted. The learned and judicious treatise of Nicolas Cragius *De Republicâ Lacedæmoniorum*, the treatise *De Rep. Lac.* in the third volume of U. Emmius's *Vetus Græcia*, and the second book (chaps. 4 to 8) of J. Meursius's *Miscellanea Laconica*, bring together the whole of the learning upon this subject. But beside the occasional notices in Aristotle's Politics and Plato's Laws, the treatise of Xenophon upon the polity of Lacedæmon contains most valuable information. It is only to be lamented that the description is confined rather to the institutions which regulated the economy of the state, and that much of the government is left untouched. The probity, good sense, and great practical experience of the writer make his authority as high as possible on all subjects.

The Lacedæmonians, or Laconians, may be considered as of three classes: the Spartans, inhabitants of the capital; the country people (*periœci*), inhabitants of the neighbourhood; and the inhabitants of the other districts or towns. The whole of these towns were under subjection to Sparta, but each had its municipal government, and there was only an assembly of the whole inhabitants upon extraordinary occasions, chiefly upon questions of peace and war. The assemblies (*ecclesiæ*) to be mentioned presently, called the lesser, were therefore confined to the affairs of Sparta and its territory, and only regarded the government of the other towns in so far as these were subject to Sparta. In those assemblies only the Spartans could take a part; the *periœci* were excluded from them, and were ineligible to office.

A great obscurity hangs over the *periœci*. Some represent them as all the free inhabitants of the country, that is, all but the Helots; others as the portion of those country people who lived near the town. Some make no distinction between them and the Lacedæmonians, reckoning as Lacedæmonians the neighbours of the Spartans, and considering all the other people as Laconians;

according to which opinion Spartans and Lacedæmonians were those Laconians who lived in and near the capital. It has been affirmed (Cramer's *Ancient Greece*, iii., 156) that the pericæci had the rights of citizens, being eligible to all offices; and it has been represented as quite undeniable that they were of Laconian origin (U. Emmius, *De Republicâ Lacedæmoniorum*), although the attempt to give them the rights of citizens was resisted in the proceedings of Agis, expressly on the ground that to admit foreigners was contrary to the laws of Lycurgus (Plut., *Agis*). Though there are difficulties attending almost any supposition, the most probable theory seems to be this. The Dorians, having overrun Laconia, at first lived with the original inhabitants, leaving them a great part of their possessions, but subjecting them to burdensome exactions. A revolt, headed by the town of Helos, was suppressed, and all who had been engaged in it were reduced to the condition of serfs, and their lands distributed, so, however, as to leave them in possession upon payment of a rent. Those who had not joined in the revolt retained their lands and were the inhabitants of the country, while the Dorians lived in the lesser towns, and were distinguished from the Spartans, who inhabited the chief town, and kept free from all admixture with the natives. With these natives, the Lacedæmonians, or Dorians, inhabiting the other towns, probably mixed more freely in marriage, and also adopted them as citizens (Erasm. Vindurgius *Hellenicus*, Art. *Lacedæmonii*). But the pericæci were in all probability the descendants of the original inhabitants living in the country. The property of the land belonged to the town people and the country people alike; and as the Dorians despised all agricultural industry, which the Spartans still more scorned after their institutions had assumed a purely military character, the whole interest which they held in the land was as manorial owners, the Helots being the possessors and cultivators.

It seems impossible upon any other supposition to account for the three following circumstances which seem vouched upon unquestionable authority.

1. The Cretan pericæci were serfs, and are represented as being in Crete what the Helots were in Laconia. Now it is quite undeniable that the pericæci in Laconia were free. But if they were originally of the same class with the Helots, and the Helots became serfs after their insurrection, we can easily perceive the rea-

son why the Cretan pericæci are compared to the Helots—the Helots being the enslaved portion of the Laconian pericæci.

2. When Cinadon, according to Xenophon, enumerated the classes of persons whom he could rely on to join his insurrection, because they all had a common cause in the oppression exercised by the Spartans, he mentions the pericæci, with the Helots, the newly-enfranchised slaves, and the inferior class of Spartans (*hypomeiones*), none of whom had any civic rights. He says nothing of the Lacedæmonians, or inhabitants of the other towns. These he could not reckon upon; and when he says that the owner only, or master (δεσποτης) of any farm will be against him, he is expressly speaking of farms belonging to Spartans alone (*Hist. Gr.* iii., p. 385, ed. Lenuclavii).

3. When Agis brought forward his plan, he proposed to make a new division of the lands, giving 4500 lots to the Spartans; and as only seven hundred families of these remained, of whom all but one hundred had lost their property, he was to fill up their number to the original amount* from persons chosen among the pericæci for their good qualities. The other 1500 lots were to be distributed among the people of the districts, that is, the Lacedæmonians, to whom the pericæci always were regarded as subordinate. Accordingly, they were not to receive their lots as a body, but persons were to be selected from among them. That they, and not the Lacedæmonians, were to be thus enrolled among the *homoioi*, the peers, or Spartans, is easily explained; there was no jealousy of them because they had not magistrates and troops of their own, like the lesser Laconian towns. They lived entirely under the control of the Spartans. The *mothaces* were a number of young persons who had been in a servile condition, not Helots, of whom the law discouraged and even prohibited the enfranchisement, but liberated domestic slaves, or their children, and who were educated along with the sons of the upper classes, in order to accompany them in war after finishing their education. And nothing can more clearly show the error of those who consider the only peculiarity of the *homoioi* to have been their Spartan training; for here the *mothaces* were free and were trained, but expressly are stated "not to have had any civil rights," Lyander,

* It is to be observed that this plan of Agis proceeds upon the calculation of those who gave, not 9,000, but 4,500, as the original number in Lycurgus's distribution. It is one of the three accounts which Plutarch mentions as current.

Sylphus, and Theocrates having, for their great services, been made citizens, as exceptions to the rule.

The people were divided into six tribes* (*phylæ*), and each tribe into five subdivisions called *obæ*. The army consisted of one division or regiment for each tribe. There were also *castes*, as in India and Egypt, so that the same occupation descended in all the members of a family. In order to constitute a citizen with full privileges, both father and mother must have been Spartan, and free for three generations. These were termed *homoioi* (equals or peers) freedmen or foreigners, and their issue were, together with the poorer classes who could not pay their contributions† to the public table, called *hypomeiones*, and had no political privileges any more than the *perioeci*. Thus there appears to have been at Sparta, as at Rome, a patrician class, and composed in a similar manner, though much more numerous. It afterwards was gradually diminished: at the time of Cinadon's insurrection in the reign of Agesilaus, three centuries after Lycurgus, there were not above seven hundred Spartan families in the whole community, and none of the class were then found serving in a lower rank than centurions.

The two kings (called *archagetæ*) were taken one from each of the royal families. Originally they were probably elected from those families; but though the form of election continued, and the assembly decided in cases of disputed succession, yet it always chose the eldest son of the deceased or deposed king, or his next male heir, if he left no son; and the grandson by a deceased son

* Xenophon distinctly states that there were six divisions. (*Rep. Lac.* xi.)—Aristotle, Diod. Sic., and others, make them five.—J. Meurs. (*Misc. Lacœn.* i. 16) plausibly suggests that Xenophon may have included the *Scyra*, troops who, though provincial, were reckoned as Lacedæmonians. But N. Cragius enumerates six tribes by their names, without including the *Scyra*. (*Rep. Lac.* i. 6.)—The *phylæ* appears to have been the military division; the *mora*, a portion of it between twenty and sixty years old, being the military age.

† Nothing can be more erroneous than the inference which some have drawn from a passage in Xenophon (*Rep. Lac.* c. 10) that all were *ipsoi*, or fully-privileged citizens, who observed the laws and discipline of Lycurgus. It is true that he there says all such should have the civic rights, notwithstanding bodily inferiority or poverty of circumstances—but this must have meant all of the class to which the civic rights belonged; for in his *Hist. Græc.* iii., he describes Cinadon as both strong and brave, and yet not of the *ipsoi*—see N. Crag. *Rep. Lac.* xi. 10; U. Ekm., *Gr. Vet.* The account which Xenophon gives of the grounds on which Cinadon had reckoned for success shows how few *homoioi* there were—"Count the people in the market-place, kings, ephori, senators, and about forty more;" and in the country, "the master only of each farm."

excluded his uncles. The deposition or forfeiture of the father for crimes involved not his issue; and infancy formed no bar to the succession, a guardian or regent being appointed to administer during the minority and superintend the child's education. It was a ground for passing over the next heir that he had any lameness or other great bodily defect. Nor could one of the other family ever succeed on a vacancy, however near in blood. The purity of the constitution was entirely gone when Agesilaus, himself lame, was chosen to the exclusion of his nephew on the ground of his mother's alleged adultery; and still more when he made one of his family his colleague. It is one of the many remarkable and inconsistent things in this singular constitution, that though there was no jealousy of a spurious issue being introduced into any other family, the chastity of the queen was watched over with the most rigorous care by magistrates, on whom that duty especially devolved.

The senate consisted of twenty-eight persons chosen by the assembly, and holding their places for life. They were required to be sixty years old, of unblemished reputation, and were obliged to solicit the office as candidates. The government was at first almost entirely in the senate, and its authority was at all times considerable. The kings had the command of the forces, and one led each army, if there were two in the field; if not, and they could not agree, the senate probably bestowed the command. While at the head of the troops the king had unlimited power, both over the soldiers and the people in whose territory the service was carried on. At home he had precedence in public places, was honoured by all except one class of magistrates (the *ephori*) rising when he entered, had a double portion of food at the dinners, which, in common with the rest of the people, he was obliged to attend; had the third part of the booty taken in war; had a double vote in the senate. The kings called this body together, and they presided over it in their turn: they were also at the head of the religion of the state, appointing each two officers called *pythii*, who communicated with the oracle at Delphos, and reported the answers, which the kings used, we may believe, to support their influence. The kings had also jurisdiction in certain causes, as the right to marry an heiress whose father had died without betrothing her, the adoption of children by childless persons, and the care of the highways. Although it is possible

that, from their influence, and especially their military rank in so warlike a state, the kings were not such mere ciphers as they have been represented, yet it is plain that, from their limited prerogative, and from their unavoidable disagreements, they could have no great share of power, and were little adapted to make any encroachments upon other branches of the government.

The senate, beside the criminal jurisdiction in all capital cases,* had the power, as well as the kings, of convoking the assemblies of the people (*ecclesiæ*), and had the sole power of proposing to those assemblies laws or measures of any kind. The assemblies were attended by all the free and freeborn native citizens (*homoioi*) of thirty years old, being held monthly, and also on extraordinary occasions. This assembly had no right to originate any matter, or to debate it; for no one could speak but the magistrates, or those whom they and the senate allowed, and the assembly could only accept or reject the propositions which it made.

The chief power of the assembly was the choice of magistrates; and it was exercised by acclamation and not by ballot, and only rarely by division. A very artificial method of determining the majority without dividing was resorted to. Certain persons were appointed, it does not distinctly appear by whom, and enclosed in a building close by the place of meeting, but so that they could neither be seen nor see what passed. The candidates presented themselves in the order determined by lot, and the people expressed their opinion by shouts. The persons enclosed made a minute of what they considered as the shout of the greatest number, distinguishing by figures only, that is, calling it the first, second, and third shout, and reporting it in this way before they could tell to which candidate the figure and the shout referred. The same course, *mutatis mutandis*, was taken when any measure was proposed; and though it is said that the numbers were sometimes so balanced that the scrutineers could not tell which had the majority, and that then they required the meeting to divide, it should seem that in the assemblies this hardly ever happened, though in the meetings of the senate it was not uncommon. Thus it seems clear that with a little management the regulating

* No capital trial could be finished without a delay of some days, for fear of fatal mistakes (*nulla unquam de morte hominis cunctatio longa*); but an acquittal on the converse of this principle did not absolve—the party might be tried at any time on fresh evidence appearing against him.

body, the senate, could, by collusion with the scrutineers, as by audible signals, even if no tricks were played with the lot, obtain a favourable report touching the result of the appeal to the people, where there was any considerable division of opinion.

There were beside the kings and *polemarchs*, or commanders of the forces, other magistrates, of whose functions a very imperfect account has reached us. The *harmosynæ* appear to have had censorial powers, particularly as regarded female conduct, but also to have exercised a general corrective authority. The *homophylaces*, or guardians of the laws, beside prosecuting for offences, may have been the depositaries and interpreters of those laws, as they were never reduced to writing. The *harmostæ*, of whom more is known, because they served abroad, were governors of conquered provinces or towns; the Lacedæmonian policy being, wherever they obtained a footing, to establish a senate, generally of ten persons, and to appoint a governor over the whole. But *harmostæ* were also appointed at home for purposes of police; and the same name is given to a much higher magistrate, if we may believe Dionysius, who describes him as a dictator occasionally chosen. It is, however, probable that this only refers to such cases as that of Agis and Cleomenes, chiefs in revolutionary movements. These, and all other civil magistrates, were chosen at the annual popular assembly, and held their office for one year. The *hippagretæ* were military officers like the *polemarchs*, being three persons originally appointed by the kings, afterwards by the *ephori*, and who chose each a hundred of the most distinguished young men as a kind of body guard, or equestrian order, which, upon attaining a certain age, they quitted, but retained a rank in consequence of having been formerly so selected; and this was understood to give them a claim as candidates for any vacancy in the senate, in like manner as the *equites* had a similar preference at Rome.

CHAPTER XV.

GOVERNMENTS OF GREECE—SPARTA.

(Continued.)

Object of the Spartan system—Its operation traced—Stages of Human Life as subject to it—Marriage; procreation; infancy; boyhood; pædonomus; full age—Equality of Fortune attempted—Slaves; their Classes; Treatment—Ephori; their Power—Resemblance to Tribunes—Opinions of Authors reconciled—Ephoral Usurpation—Artificial Aristocracy—Natural Aristocracy—Controversy on Classification; Opinions of Authors—Contradictory Usages—Unintelligible Statements—Paradoxes—Duration of Lycurgus's Polity—Party Process and Changes—Agis; Lysander; Cleomenes—Spartans overpowered, join the Achaean League—Distinction of Orders.

THE whole object of the Spartan constitution and economy was to train up soldiers; to this every other consideration was sacrificed; and the extreme of consistency to which the principle was carried has certainly no parallel in the history of mankind.

The lawgiver was not satisfied with beginning at the cradle and taking possession of the new-born infant, that he might pervert its nature to his purpose; he began with taking precautions to ensure a strong and healthy breed of animals, and in sufficient numbers. Young men were required to marry at an early age, but not until the vigour of their body had become complete. The maidens were not inured to female occupations or trained to the softness and delicacy that most adorns their sex, but habituated to masculine sports, and to exposure of their persons for the sake of acquiring a hardy and muscular frame. With a view to eradicate the sense of shame which might prevent them from regarding themselves as the lawgiver did—in the light of mere brood cattle—they were accustomed to associate as much with youths as with those of their own sex. Although marriage was held in reverence, and ordinary bastardy deprived of all political privileges, adultery was allowed, and even encouraged, wherever there was either a want of issue, or a prospect of improving the breed by a change of connexion. The law even interfered with the seasons of conjugal intercourse, in order to promote the more vigorous generation of a robust offspring.

The young animal being born, was instantly delivered over, not to the care of the parent, or even of a nurse, but to government inspectors, who put it to death if it either had any blemish or appeared of a sickly constitution. The Romans allowed the same option to the parent that the Spartans gave the magistrate; and the term *education* derives its origin from the father electing to take up his progeny, instead of leaving it, as he had the power of doing, exposed to perish.

At an early age the boys came under the government of a magistrate, called the *pædonomus*, or boy ruler, who took care that they were trained to habits of exercise, discipline, and temperance, not so much for the sake of their morals as of their health, and to give them the strength, the agility, and the powers of endurance which were the great essentials of Spartan excellence. But cunning as well as patience and courage was to be acquired; and thieving and stratagem was taught, the remorse being connected only with failure, and the shame only attached to detection. Sentimental attachments were, also, encouraged between persons of the same sex, with a preposterous notion of inspiring courage and confidence, and a reliance, still more absurd, upon the power of the law to prevent the abuses which it encouraged.* In order that every chance should be taken to secure the great object, the production of an animal of perfect strength and suppleness, and in good condition, even the period of military service was postponed, and a year or two of the youth's life was spent in the chase.

But the superintending care of the state did not cease when the young soldier had been given to his country; the life of each man in war was regulated by his commander, and by the magistrates who accompanied the forces, and in peace by a discipline almost as rigorously enforced as if the town had been a camp. All the citizens were obliged to feed at a public repast, of a broth proverbially alike difficult to eat and to digest, and of boiled pork, which the older and truer Spartan despised and left to younger and nicer palates. On these dainties the magistrates, the kings not excepted, were bound to feed with the rest of the community;

* In Crete the atrocious plan was pursued of encouraging the worst abuse of those passions; and Xenophon, in affirming that no such abomination existed at Sparta, confesses that it is not easy to make people believe this in Greece, because of the guilty practice prevailing elsewhere.—*Rep. Lac.*, cap. ii.

and though wine was not forbidden, no one was allowed to use a light in going home, in order that all risk of intemperance might be avoided. But at this public repast the citizens were not suffered even to choose their places. They were classed in companies of fifteen; and each company admitted persons to fill up vacancies by a ballot, in which a single dissentient was sufficient to exclude. Gymnastic exercises occupied the whole time not given to war and the chase, while the season of youth continued; at a mature age idleness was regarded as the peculiar privilege of the free.

If the Spartan system outraged all the feelings and tastes of our nature, and treated men as mere animals for the purpose of improving the breed of soldiers, it did no less violence to every prudential principle upon which the political structure of society rests, for the purpose of maintaining an imaginary impossible equality, loosening all ties, and confounding the whole community into a single family. The whole land of the country was divided into small parcels—9000 for the Spartans themselves, 30,000 for the country people (*peræci*)—each parcel was calculated to suffice for supporting a family,* and no person was allowed either to sell, or exchange, or devise his lot so that his eldest or other male heir might be disappointed of the succession. The use of gold and silver, or of any money but pieces of iron a pound in weight, was strictly forbidden, as well as of all ornaments, and all luxuries of every kind. Each person was allowed to interfere with his neighbour's children, and correct them as if they were his own. Every one could in like manner use his neighbour's cattle, or his dogs in hunting, or his arms or furniture, and, as far as laws could provide for it, or encourage it, all men's goods were in common, there being only separate property recognised in the soil. But it was probably by inculcating the duty of freely lending rather than by recognising any absolute right that this community was sought to be established.

The most hateful part of the Spartan economy remains to be mentioned: in no part of Greece, or indeed of the ancient world, was there so large a proportion of slaves. Their numbers do not anywhere appear; but as all authorities are agreed that they were far more numerous than in any other state, as we know that in

* Each person was supposed to have seventy bushels of grain for himself, and twelve for his wife, with wine and fruits in proportion. Eighty-two bushels may have been about seven quarters of our measure.

Attica there were 400,000 slaves to about 40,000 free inhabitants, and as we moreover are informed that no less than 50,000 were carried away by the Ætolians in one incursion upon Sparta, we may form some notion how abundant the slave population must have been. It consisted of three classes—the common household slaves, taken in war or acquired by purchase, and their descendants; the Helots, or descendants of the ancient inhabitants, whom the Dorians or Lacedæmonians conquered; and the Messenians, who were also, but at a later period, a conquered people. All writers are agreed that the Messenians were even more cruelly treated than the Helots; and they, as well as the first-mentioned class, appear to have been held in absolute slavery, not being attached to the soil like the Helots, who were properly speaking serfs, and possessed the lands originally belonging to them upon the payment of a moderate and fixed rent. But their treatment was so inhuman, that we can with difficulty imagine that of the Messenians to have been worse, and are led rather to suppose that the difference referred to as indicating an inferiority of the Messenians must be the serfage of the Helot, who could not be separated from the soil nor liberated from his bondage without the public authority. Hence his condition is frequently described as something between liberty and slavery. It was no doubt the more cruel for being the less absolutely dependent. The supposed rights, the fear of resistance, the wealth which he even was allowed to possess, all exasperated the ferocious Spartan against him, and having no protection either in the law or its administration, constant suffering was his lot. He was hunted like a beast; he was compelled to work at the hardest and most degrading employments; he was dragged to the field and exposed to all the toils and dangers of war. When the Spartan youths were to be taught how to conduct ambushes, it was by sallying forth from the woods and murdering the Helots as they escaped, that the lesson of "glorious war" was made easy. Nay, in returning home at night a Spartan, always armed, happening to meet some of these wretched beings, would wound or kill them in sport. The fear of their revolt was at the bottom of all this cruelty; and on one occasion when 2,000 had volunteered to serve the country in a dangerous expedition, and were with unheard-of perfidy rewarded by emancipation, the fear of their martial prowess was such, that they are said to have been all murdered in cold blood, all having immediately disappeared.

"They made them disappear," says the historian, "and no one knew how each of them perished."*

It appears that after the constitution as settled by Lycurgus had lasted somewhat more than a century and a quarter, a material change was introduced. There probably had at all times existed magistrates called *ephori*, or overseers; and they may have had jurisdiction in private causes, or suits between individuals. It is also possible that their influence may have gradually increased until they assumed a large share in the government. But the weight of authority is in favour of that account which represents them to have been either altogether created, or, which is more likely, armed with extended rights, by one of the kings; and the most rational theory seems to be this. The senate, like all aristocratic bodies, had so encroached both upon the royal prerogative and upon the rights of the people in the assemblies, that an alliance or co-operation was effected between the kings and the people. The kings, without the people, had no direct power in peace and in domestic concerns; but if they could obtain their support against the common oppressor, by claiming a restoration of popular rights, the royal authority must gain by the change. This was probably the view which Theopompus according to some, Chilon according to others, had in arming the Ephori with new powers, or as the commonly received account has it, of creating the office, as a protection for the people against the senate. A protection against the crown was obviously unnecessary in the reduced state of the royal authority; but the Ephori were empowered to protect the people against all magistrates as well as against the senate. They were five in number, and chosen in the assembly without any qualification of class or of property; so that persons of the humblest condition and greatest obscurity might hold the office. Other magistrates must have had at least wherewithal to pay the very moderate contributions required for the support of the public table; but the Ephori needed not have even that small fortune. Aristotle uses a remarkable expression respecting the effect of giving the people this voice in the government, though he greatly disapproves the allowing persons of no weight in character or in station to hold such power. "The people," he says, "rests in quiet or leads a quiet life (*ἡσυχάζει*) from having a share in the government."†

* Thucyd., iv. 80. *Ἐφ' ὧσιν τι αὐτοὶ* are his expressive words.
Ar., Pol., lib. ii.

The resemblance of the Ephori to the Roman tribunes has often been remarked; and they appear to have usurped a considerably larger share of power. They not only judged in all private causes, which probably was their original office, but they assumed the right to inflict fines at their pleasure for all offences except capital ones, and to levy these fines upon the offender. They equally with the kings and the senate had the privilege of convoking the assembly of the people, and of propounding laws and measures. They could also convoke the senate, and they sat and voted in it. They were the only persons who did not rise upon the entrance of the kings into any public assembly. The most important power, however, which they claimed and constantly exercised, was that of removing and punishing magistrates for malversation in office, or for oppressing the people. The language employed by authors would lead to the belief that the Ephori not only denounced, but themselves tried and condemned on these occasions.* It is, however, probable that in graver cases they brought the party before the assembly; but they certainly had the power of interrupting the magistrate during his office, and of casting him into prison. They assumed the power also of putting the kings themselves on their trial; but it is more distinctly stated that when a king was to be tried the senate sat with the Ephori as judges, the other king presiding; and in case of condemnation, there lay an appeal to the people. Instances are cited of this power being exercised; but that of Agis, who was put to death, with his mother and grandmother, in circumstances of extreme and even brutal cruelty, must be regarded as the violent act of partisans in a revolutionary movement. When Pausanias was tried the senate were equally divided, but the Ephori voting with the fourteen who were for an acquittal, he escaped. Each king monthly took an oath to govern according to the laws, and the Ephori on the part of the people also swore that his dominion should be supported as long as he kept his oath; a compact strongly resembling that of the Spanish and other feudal monarchies.†

* 'Ἐνθ' αὖτε παραχρῆμα κολαζουσι (Xen. *Rep. Lac.*, viii.): "they punish directly and on the instant." But when speaking of capital punishment, he only says they bring to trial *αὖθις αἰώνια*.

† The important subject of the Ephori has given rise to considerable controversy, chiefly as to the manner and time of their introduction into the constitution. Xenophon, though he does not in very distinct terms say so, yet plainly intends to state that

The most constant and arbitrary interference in all departments military as well as civil, soon proved that the Ephori had attained a power which was more than a match for both kings and senate combined. They assumed the general power of executing the laws, and of enforcing the decrees of the assembly, as well as superintending all other magistrates; they took upon them also the general censorial power, the Harmosynæ being forced to act in subordination to their authority; and they exercised a universal civil jurisdiction, though the kings, who originally held this in their own hands,

Lycurgus introduced them. (*Rep. Lac.*, cap. viii.) The word (*εφηροισι*) implying that the chief men (*γεγενηται*), with whom he had described Lycurgus as having acted, joined him in introducing the *ἐφεσια*. It is hardly correct, therefore, to cite Xenophon, as Barthelémy (*Fog. An.*, iv., 460, 4to. ed.) has done, for the position that it was not Lycurgus, but the principal citizens who created the office, and to join his authority with that of Aristotle, Cicero, and others, who date the change about a century later. The Abbé cites Plutarch as an authority also to the same effect. But he afterwards cites another passage to show that the Ephori raised a popular tumult against the introduction of Lycurgus's changes. Here, then, as in so many other instances, that writer (Plutarch) is too careless to be of much weight as an authority. There are, also, inconsistent passages in Plato to the same effect, namely, *Epist.* viii., and *De Legg.* iii. The authority of Aristotle appears entitled to much greater respect, and he expresses himself without any hesitation (*De Rep.*, v., 11), although he had distinctly before him the institution of the Cosmi at Crete, and had in a former book compared the Ephori to them (xi., 10). U. Emmius (*De Rep. Lac.*) gives the preference to this opinion, and N. Cragius (ii., 4) leans to the same side. J. Meursius, however (*Miscell. Lac.*, ii., 4), cites a passage of Diog. Laert., ascribing to Chilon, one of the Seven Sages, the appointment of the Ephori to govern along with the kings. That a magistrate of this name was known among the Messenians as well as the Cretans seems to be generally admitted, although his powers were probably much more limited than those of the Ephori soon became at Sparta. If, indeed, we can trust the speech which Plutarch puts into the mouth of Cleomenes (*Vit. Cleom.*), the kings originally appointed them as their deputies when absent from the city; and this is a much more probable account than the somewhat romantic story told of Theopompus, that he created the office expressly for the purpose of being a bridle on the royal authority, saying to his wife, when she accused him of weakening the power he was to leave his son, that it would be more lasting, though smaller. Aristotle adopts this story, contrary to his wonted sagacity. Cicero (*De Legg.*, iii., 7) also says that Theopompus created the Ephori to counteract the kings (*oppositi regibus*), as the tribunes were made to counteract the consuls. The most probable solution of the difficulty, and which goes far to reconcile the various accounts, is, that there were Ephori before even Lycurgus's time, who might be lieutenants of the kings in their absence, and might in the course of time come to exercise jurisdiction even while the kings were at home; but that in the time of Theopompus, when their authority had become somewhat greater, a change was made which gave them, and through them the people, a power of resisting the senate. It must be borne in mind that the reign of Theopompus, and consequently the date assigned to the change in the power of the people through the Ephori, coincides with the important event of the Messenians being completely subdued, and their territory divided among the Lacedæmonians—an event which probably increased greatly the numbers of the landowners or privileged class.

retained the right of sitting with them in judgment upon causes. The Ephori despatched ambassadors, received those of foreign nations, levied troops, instructed their commanders, provided for their pay and sustenance; in short, exercised the whole powers of government, either of themselves with the consent of the people, or by direct authority derived from the decrees of the popular assembly. They appear to have held a far more absolute and undivided authority than the Roman tribunes. Perhaps at the most brilliant period of the Spartan history, and before the conquest of Athens had relaxed the ancient discipline, they resembled the Committee of Public Safety in France, as far as regarded their power and their success. Nor in the struggles which at various times ensued between them and the other governing bodies, the kings and senate, was the senate at all united. The Ephori had always a party, often the majority of the senate, under their influence; and the only risk which their power seems ever to have run of being destroyed was when a king, availing himself of their number (as the patrician party did at Rome of the number of the tribunes), obtained the co-operation of several Ephori against their colleagues, and against the order which they represented. We are left without any information as to the power possessed by each of them individually; and though it seems probable from their sitting as a court or body, that each had not independent authority like the Roman tribune, yet the Spartan history abounds with instances of a single Ephorus issuing his orders to the generals of armies, and commanding the arrest of magistrates—whether with the assent of his colleagues, or by usurpation, or by right, we have no means of ascertaining: one or the other of the two first suppositions seems the most probable.

From the composition of the Spartan ruling body, the *Homoioi*, it seems manifest that as its numbers decreased, and as no additions were ever made by allowing foreigners to be enrolled,* while the numbers of the Lacedæmonians, the people of foreign

* It is said that only two instances of any such naturalization were known. We have no distinct account of the Laconian population; for Plutarch (*Fit. Lge.*) gives three totally different statements in the same passage; but we are told that they could send 30,000 infantry and 1500 cavalry into the field. (*Arist. Pol. ii.*) At Plataea they had 45,000 men, but chiefly Helots, there being only 5,000 Spartans and as many Lacedæmonians. If the 31,500 is exclusive of serfs and mercenaries, the population must have been 140,000 at least. The proportion of Spartans we have no means of ascertaining; but Xenophon (*Hist. Gr. vi.*) mentions 700 Spartans as their whole

and of servile origin, greatly increased, the power which was gained by the people, and of which the Ephori were the depositaries, necessarily became the power of a privileged order, and that the Ephori were then the representatives of an aristocracy. At first, when the Spartans were a numerous body, and the rest of the community insignificant in bulk, the power, as far as any was possessed, independent of the kings and the senate, might be considered as that of a democracy. But the kings and senate together far outweighed the people until the power of the Ephori was extended, and therefore it must be considered that the first form of government was rather aristocratic or oligarchical than democratic. For although the senators were chosen by the people, and though at that period the people consisted of the whole nation, except slaves and foreigners, yet the kings, who were taken from a class consisting of two families, must be regarded as a part, and a very important part, of the governing body, the senate; while the rest of the body must have had, with the aid of the kings, a preponderating influence in the votes by which successive vacancies were filled up. There was thus, in substance and effect, a ruling body irremovable, and only liable to be changed so slowly by the people at large, even independent of the senate's influence, that little real power remained beyond the circle of the body. The rise of the people's power gave a democratic form to the government, with a counteracting power on the part of the senate; and when what had been the popular body became a select or privileged order, engrossing that large share of power, and excluding the body of the inhabitants from all civil privileges whatever, the government must be considered to have become wholly aristocratic, the aristocracy consisting of three branches, the kings, the senate, and the Spartans, or *homoioi*. It appears sufficiently clear that the Ephori were in all respects either the agents and creatures, or the leaders and masters of the privileged class, the most powerful branch of this aristocracy, and were thus the tyrants of the people at large when they co-operated with the senate and the kings, and when resisted by one or both of these two classes, their

numbers at Leuctra, and adds that 400 were killed, there being 1000 Lacedæmonians killed. This would make, if the proportions were preserved, 1750 Lacedæmonians. At the battle of Corinth, he says they had 6,600 and 7,200 allies (*ib.*, lib. iv.) The lowest estimate in the passage of Plutarch gives 4,500 Spartans in Lycurgus's time, and the highest gives 9000, the Lacedæmonians being 30,000.

tyrants also. The constitution was aristocratical, and as the oppressed people had a very numerous body of slaves and of serfs still more oppressed than themselves for their natural allies, the result took place which never fails to follow from a minority ruling over a hostile majority; terror was called in to supply the want of force, and a perpetual apprehension of the Spartans that the Helots and Messenians might join the Lacedæmonians in throwing off the common yoke, mingled with an occasional alarm that those servile castes might join a foreign enemy, was sometimes the cause, and always the pretext, of the dreadful cruelties exercised upon those hapless races, to the lasting disgrace of the Spartan name.

There can be little doubt that if the independence of the state had continued for some ages, and the privileged body had been reduced still more in numbers, while the bulk of the people increased, the same struggle would have ensued which elevated the plebeian order at Rome, and the Lacedæmonians would have obtained the preponderance. The Natural Aristocracy would then have been formed without regard to Spartan extraction. The families of distinguished men, the descendants of the senators and kings, the persons of wealth and renown, would have held the highest places in the senate and the magistracy. While the commonwealth lasted no such arrangement took place. But there must have been the usual conflict of individuals and of their supporters—the usual struggle of parties for power—and the Natural Aristocracy, to a certain extent, must have had its influence within the circle of the privileged class (*homoioi*), among whom the senators, in all probability, carried on the intrigues of faction. We find the kings and other leading men paying court to the Ephori; Agesilaus always rose when they entered the room, as indeed he courted the senate by making a present to each person on his election. There was thus the Natural Aristocracy, as it were, within the Artificial, and the party game was played without any reference to the people, because as yet the people had obtained no privileges, and it was not worth the while of any party to court them. They might be formidable enough in an insurrection, just as the Helots, the Messenians, and the slaves might be; and accordingly Cinadon, in describing his resources, names the Lacedæmonians, the *periœci*, with the freedmen and the serfs. But until a faction had determined on rebellion the

help of the people was unavailing, and the proceedings of party are always framed upon the plan of only using the means which the existing constitution makes lawful.

The ancients were a good deal divided in opinion upon the question to what class of governments the Spartan properly belonged. Plato, in one passage (*Leg.* iv.), seems to think that the difficulty can hardly be solved; but he, in another passage of the same book, treats the denial of it being an aristocracy as absurd (*αποπρον*). Aristotle, without pronouncing a decided opinion himself, says that some consider it as a mixture of monarchy, oligarchy, and democracy, while others regard the ephoral power as a tyranny, and the institution as in many respects democratic (*Pol.* ii.). But he afterwards says that the power of the Ephori converted the aristocracy into a democracy. Plutarch so entirely differs in his view of the question, that in one of his works (on the Three kinds of Government), he gives Sparta as the example of aristocracy; and in another (Life of Lycurgus), he describes the power of the Ephori as the power of the aristocracy. Others, as Isocrates (*Panath.*), regard it as a mixture of aristocracy and democracy. The safest course seems to be that which we have ventured to take, of considering the different periods of its history as presenting different forms of the government, and of distinguishing carefully between the Spartan body and the nation at large.

But it is a much more difficult thing to ascertain how far we can trust the accounts of so strange and unnatural a state of society as the Spartan institutions are represented to have established; the more especially as those accounts appear frequently to involve contradictions, as well as matters the operation of which they afford no means of comprehending.

1. Among the former class may be reckoned those extraordinary provisions respecting female chastity, to which reference has already been made. Children born out of wedlock had no civil rights; but adulterine bastardy was occasionally encouraged by the law. A strict watch was kept over the chastity of women (a vigilance which the best accounts show to have been exceedingly ineffectual), while, with the husband's consent, the wife was suffered to form a connexion with another man merely to gratify his passion, and independent of the adultery permitted for the sake of securing an offspring. Then, with all this indifference on the

subject, it was a common form of swearing at Sparta to wish an enemy four great curses, of which one was, that his wife might have a gallant. It is true that the other three (a taste for building, for embankments, and for horses) all turn upon expense, and so the gallantry might be reckoned only pernicious from its costliness.

The compelling all to dine in public seems difficult to reconcile with the ballot and exclusion from the messes. How were those excluded to comply with the law? Then how were those to obey who could not pay the monthly contribution? Was the table only for the *homoioi*? But then the *hypomeiones* must have had more freedom than the privileged class; and so greatly was freedom prized above everything else, that the Spartan looked down with contempt on all who even laboured voluntarily, and respected the indolent as the most free.

The only meat allowed is said to have been the black broth and hoiled pork. Yet we are told that whoever went out to hunt sent what he caught to the public table. By whom was the game eaten, and how was it cooked to avoid improving the fare, and introducing a taste for luxury?

Each person was allowed to drink as much wine as he pleased, in order to show that reliance must be placed on his temperance, and that it was no virtue unless it were voluntary. But then, to prevent it from being voluntary, every one must find his way home in the dark. Not to mention that this late hour of dining or supping assumes the whole company to have eaten in private during the day, contrary to the fundamental principles of the system.

There was an inscription or notice fixed to the wall, and the young Spartans were often reminded of it by the elders; nothing said in the dinner-room was to be repeated out-of-doors. But as all the people, or nearly all, were admitted, it is difficult to understand how any harm could be done by the disclosure.

2. But the division of property seems the least comprehensible part of the polity. The allotments of land could not be sold or divided, and all encouragement was given to bringing up a numerous family. Then how were the younger children maintained? Yet the law seemed to assume that every citizen had the means of subsistence; for in the earlier times all who served in war defrayed their whole expenses, and every male from twenty to sixty years of age was a soldier. It was only in later times that

the state furnished the expenses of its troops. After the system of Lycurgus had been established about a century, the conquest of Messene gave a large increase of national domain; but two or three generations must have again filled the country with paupers. Were the Helots and Messenians (the actual owners of the land, subject to fixed rents) regarded as liable to be dispossessed, that is, to have an additional number of manorial lords imposed upon them as the numbers of the people increased? And yet all authors are agreed in stating that the rent paid by these serfs was never raised. Observe—no explanation of the difficulty is afforded by the fact of the Spartans diminishing in numbers; for the Lacedæmonians, the *pericæci*, freemen inhabiting the country districts, had the property in the land as well as the Spartans, and their numbers increased exceedingly. At the first division 30,000 allotments were distributed among them, above three times as many as fell to the share of the townfolk. It is another difficulty that while all fortunes were required to be equal, certain citizens, because of their wealth, furnished horses for the cavalry; and these were used only by inferior troops, the infantry being reckoned the more honourable service. Nor will it suffice to urge as an explanation of such difficulties that the ancient writings have preserved only an imperfect record of the facts; for the ancients themselves appear to have felt how hard it was to comprehend the Spartan economy. Aristotle points out the inconsistencies of some of Lycurgus's provisions (*Pol.* ii.). Plato, as well as he, describes the luxury and insolence of the Spartan women, whose domineering nature and profligate habits have hardly been denied by any writer excepting Plutarch.

The prohibiting a circulating medium appears to be if possible more unintelligible. For if it was meant to prevent the accumulation of wealth, no such object could be accomplished, unless barter were forbidden; and though free men and women might not be allowed to work at all handicrafts, in some they could employ themselves: at any rate they could buy slaves and make them work. There were prohibitions of luxuries, such as fine furniture and costly ornaments: but any one might amass such property, though he could not display it; and to the possession of slaves and cattle there were no limits.

It was however held that every man's cattle might be used freely by his neighbours; his horses ridden, his slaves driven, his

children corrected. Then what subjects of dispute could there be for judges to determine, except perhaps assaults? And yet we are told that the magistrates sat daily to determine causes, and that the army was always accompanied by judges to settle the disputes between individuals, without troubling the commanding officers. Though no professional advocates were suffered, the character of the people was litigious; and their avarice was almost as proverbial as the want of all chastity in both sexes.*

In all the doubt and difficulty, however, which encompass the subject, there appears every reason to believe that the extraordinary state of society which Lycurgus's institutions either created or completed had a duration very little to be expected from the principles upon which it was founded, and only to be explained by the system of education which formed its principal constituent part. The original distribution of property must needs have been constantly broken in upon; and the complaints made of harsh creditors, at an early period, prove that wealth was gradually accumulated in different hands. The introduction of luxuries, to a certain extent, also took place, and the severe discipline generally was in some measure relaxed. But the great features of the system were to be traced according to the commonly received accounts at the end of five centuries, although the Peloponnesian war and the conquest of Athens had produced considerable changes, and though Xenophon admits, at the end of three centuries, that important deviations had taken place from the ancient regimen, particularly in the disposition of men to obtain provincial and foreign governments, to amass wealth, and rather to possess eminent places than to qualify themselves for deserving them (*Rep. Lac.* xv.). It can hardly be doubted that the degeneracy went on increasing till the wars of Lysander and Agesilaus. The consequent intercourse with foreigners, and especially with the East, a century later, introduced great laxity of discipline, and rendered the Spartan habits little less luxurious than those of other nations. A great change in the laws respecting property had been introduced, probably soon after the Peloponnesian war, though the time is uncertain, by one of the Ephori, Epitadius, who carried an ordinance allowing the alienation of property both by gift, sale, and devise. But it is probable that the strictness of the former law had been gradually relaxed before this change,

* *Αναστροφὴ* was the common expression in Greece for unnatural practices.

and that it only added the power of devise to a right already recognized of conveyance *inter vivos*.

A considerable number, however, of the privileged class (*homoioi*) still continued to take a pride in adhering to the old discipline, and to distinguish themselves by this which had now become a peculiarity among the Spartans, as it had once been a mark of the whole class, distinguishing them from the Lacedæmonians and others of the common orders. It appears always to have been regarded with respect by the people at large; and the general recurrence to it made a principal part of the reforms occasionally propounded by those who were desirous of changing the aristocratic form which the government had assumed. We are not informed in what respect this was urged by Cinadon; but it formed a material part of the plan proposed by Agis, and afterwards executed by Cleomenes. Agis having become king about four centuries and a half after the time of Lycurgus, took the lead of the popular party, and his colleague, Leonidas, appears to have been at the head of the Spartan or privileged order. Agis, with the concurrence of at least one of the Ephori, Lysander, whose election he had influenced, proposed the redistribution of the lands, the reduction of the Spartans to their original allotment, the grant of the residue to the Lacedæmonians, the admission of these to all the privileges of citizens, and the filling up their numbers from the *periœci*, together with the subjection of all classes of citizens to the ancient discipline. He made a voluntary surrender of the whole property, real and personal, of his family, as an earnest of the sincerity and honesty of his motives in bringing forward this important measure. The senate rejected the proposition by a majority of one; the people supported Agis; Lysander impeached Leonidas, the leader of the aristocratic party; and, with the aid of the people, dethroned him, placing Cleombrotus in his room. A new election of Ephori was on the point of restoring Leonidas, when Agis and Cleombrotus by force removed them from their office, and prosecuted their reforms with the help of Agesilaus, whose election as an Ephorus they had brought about. He appears to have betrayed them, having a large estate and heavy debts, and resting satisfied with a measure for absolving all creditors, but delaying the promised distribution of lands. This completely alienated the people from the party of the two kings

and Agesilaus, who began to act oppressively, and excite a strong disposition in favour of Leonidas. A party of the aristocracy therefore recalled him, and the people, deceived in their expectations of the only reform they cared for, stood by and saw Leonidas restored, and Agis dethroned and barbarously murdered, with his mother and grandmother. Cleomenes, who succeeded his father, Leonidas, and married Agis's widow, is represented as having been induced by her to renew the measures of her husband, for whom she is said to have filled him with the greatest admiration. It is much more probable that he found the power of the Ephori had become intolerable, and that the war which was carrying on with the Achæans gave him a pretext for introducing a change of government, as indeed it afforded a good reason for inducing the people to make extraordinary efforts, by awakening their zeal for the public service. What we know for certain is that he put four of the Ephori to death, abolished the office, and banished eighty of their partisans, brought forward at the same time the measures of Agis for dividing the lands, set the example, like Agis, by giving up his own estates, admitted a selected body of the *periœci*, so as to complete the number of the *homoioi*, cancelled all debts, and restored the strict education and discipline established by Lycurgus. It should seem that for some time at least he had been sole king. How this happened we are not told, but the prejudices of the people being strongly against monarchy, or the government of one king, to which they had not been accustomed, he had his brother elected king with him, being the first instance of both kings taken from the same family. These changes happened in the year 230 B.C. The vigour which they gave the government enabled Cleomenes to carry everything before him in the war with the Achæans, who could only make head against him by obtaining the aid of Antigonus, the Macedonian general. He defeated the Spartans, drove Cleomenes from his kingdom, and upon the same principle which led the Russians and their allies to maintain the Polish anarchy, restored the government of the Ephori, and indeed all that Cleomenes had abolished. The Spartans were soon after compelled to submit and join the Achæan league, abandoning for ever the institutions of Lycurgus.

It is manifest that, before the time of Agis, the aristocracy had become divided into two classes, the wealthy families, about one hundred in number, and the remaining six hundred, who, though

possessed of the political supremacy, were dependent upon the richer citizens, and probably in most cases their debtors. The class below these, the hypomeiones, and descendants of freedmen and foreigners, in all probability formed nearly the same kind of order with the poorer of the homoioi, and took part with them in supporting Agis and Cleomenes in their revolutionary measures; hoping, if not to share in the lands distributed, at least to have their debts cancelled. The party of the Ephori, the aristocracy, or rather the oligarchy, as contradistinguished from the rest of the aristocracy (homoioi), were probably the wealthy families, eighty of whom Cleomenes banished.

CHAPTER XVI.

GOVERNMENTS OF GREECE—ATHENS.

Authors—Early History—Cecrops; Theseus—Threefold Division of the People—Ancient Officers—Panathenæa—Kings—Archons—Eupatridæ—Polemarch; Eponymus; Basileus; Thesmothetæ—Classes; Pedræi; Diacrii; Paralii—Anarchy—Draco—Solon—Errors respecting his Legislation—Solon's Reforms; Archons; Colleges; Pædri—Courts of Justice—Areopagus—Heliastæ—Inferior Magistrates—Pure Democracy—Classes of the People—Population—Slaves—Effects of Slavery; Xenophon; Plato; Diogenes—Phylæ; Phratræ; Genea; Trityes; Demi—The Ecclesia—Senate—Elections; Scrutiny—Prytanes; Epistatæ—Euthynæ; Logistæ—Voting; Ballot—Areopagus—Its Powers; its Composition—Logistæ; Euthynæ—Mars Hill; St. Paul—Helica—American Court—Ephetæ.

THE government of Athens and the Athenian history generally are more fully known than those of Sparta. The writers whose works have reached us are all Athenians, or inhabitants of the colonies and provinces which had constant intercourse with Athens. They therefore, though living at a distance of time from the earlier stages of the constitution, were yet fully acquainted with its structure and working in their own age, and wherever they have left any uncertainty in treating of their earlier institutions it has rather been owing to their omitting to describe what they consider every one must know, than from the subject being unknown to themselves. The more early portions of their constitutional history are necessarily involved in the doubt and obscurity inseparable from such inquiries.

About thirty years before the Phœnicians made their inroad into Greece, as we mentioned in Chapter XIII., Athens is supposed to have been founded by Cecrops. The date of this event is, as we before stated, variously assigned, Sir I. Newton placing it nearly five centuries later than the greater number of ancient authorities; but with the balance of probability altogether on his

side, he assigns the year 1080 B.C. for the foundation of the city.

Cecrops is generally believed to have come from Egypt; but he may very possibly have been a chief of the Pelasgi, the original inhabitants of Greece; and the Athenians over whom he obtained his dominion were most probably a tribe of that nation, first called Cranai, from the name of a former chief, though they are frequently described as a tribe of the Ionians who had invaded Greece from Thessaly. Cecrops is represented as having collected them into twelve tribes or towns, of which Athens, then called after him Cecropia, was the most considerable, being built around a rocky hill or stronghold where he had fortified himself. The other towns were only very imperfectly under his dominion, each having its own chief and senate or council of elders, and all living in constant alarm from the Bœotians, a powerful nation in their neighbourhood, as well as in a state of frequent war with each other. Under the successors of Cecrops Athens retained, in general, the same kind of precarious and irregular influence over the other eleven states, and it was not till the time of Theseus, in the latter part of the tenth century before our era, that anything like a regular system of government can be said to have been established, even if we take the traditions which remain of his times as authentic history. The Cretans having obtained some decisive victories over the Athenians, he restored their independence; and using the power which this gave him, partly by persuasion, partly by the protection which he could afford them against invasion, he induced the eleven towns to give up their separate councils, and all unite under one government and one council at Athens, whither he had attracted a great concourse and established in it a powerful force.* He is said to have given up in a great measure his own regal authority, retaining only the command of the forces and execution of the laws, and to have divided the people into three classes, the well-born or patricians (*eupatridæ*),† the agriculturists (*geomori*), and the artisans (*de-*

* Thucyd., ii., 15, says he was powerful as well as prudent or wise—*μεγαλὸν τὸν ἔμπεδον καὶ δυνατὸν*.

† *Εὐπατρίδαι, γεωργοὶ, ποιμενικοί*. The division into four tribes whose names were repeatedly changed has probably given rise to some confusion; for it is said that Erechtheus gave them the names of armed artisans, farmers, and shepherds, which plainly the threefold division expanded. Yet it is also possible that the two divisions were different, and that the fourfold division may have been only of the Eupatridæ, or of the Eupatridæ and Geomori.

miurgi), confining to the first the right of sitting in the council or senate,* of superintending religious rites, making laws, and holding magistracies. There seems to have been a judicature (*prytaneum*) as well as a council established.† What these magistracies were, or how they were conferred, and how the council and judicature were chosen, we have not the least information, except that *polemarchi*, or commanders, *colacretæ*, or treasurers, *naucrarii*, or collectors of imposts, and *phylobasileis*, or chiefs of tribes, are all mentioned occasionally as most ancient officers; but the frequent mention in after times of a popular government as the work of Theseus makes it probable (as U. Emmius has observed ‡) that the choice of magistrates was lodged in the upper class, if not in the others also. We are equally ignorant in what manner the confederate or subject towns sent their deputies to the council, or indeed whether they sent any at all, and were not entirely under the power of the Athenian government, for the support of which all appear to have paid tribute.§ But the one institution which can with tolerable certainty be traced to Theseus, and which continued ever after, had a direct reference to the federal union, and was plainly designed to maintain it. A yearly festival was established, at which all the inhabitants of Attica were present, and which was hence called the *panathenæa*.||

The chiefs or kings who succeeded Theseus soon extended their authority, and diminished that of the council and people; and Codrus, who reigned about a century and a half after him, having fallen (it is said, voluntarily sacrificed himself) in the first war between the Athenians and Dorians, the royal power was much abridged, and the name of king changed to *archon* or first magistrate. A century and a half later,¶ the archon's office instead of being for life was given only for ten years, and in less

* Βουλυσσεν. Plutarch (*Vit. These.*) says the senate still met in the same place where Theseus had planted it.

† Plutarch (whose account is the most minute in other respects) mentions less distinctly than Thucydides there being a *prytaneum* as well as a senate.

‡ *Vet. Græcia.* (*De Rep. Ath.*)

§ Thucyd., ii., 15.

|| Παναθηναία. There were other games called *μεικτικά* or migratory, and *συνικά* or cohabitative, with a reference to a union of the provinces, similar to that of the *πανθηναία*.

¶ The ordinary account makes the hereditary archons continue for 315 years (C. Sigon., *De Rep. Ath.*, and *De Ath. Temp.*—U. Emmius, *Vet. Gr. Rep., Ath.*); but the Newtonian account is followed in the text.

than fifty years it became annual. The principal change introduced on the death of Codrus appears to have been that the archon was rendered accountable to the senate and people like other magistrates; but the office continued to be hereditary, the senate and people only interfering in cases of disputed succession. When the decennial archons were substituted, the election became vested in the people, that is, in the patrician class (*eupatridæ*); and when the office became annual, it was held not by one, but by nine, chosen in the same manner,* of whom one was the chief, giving his name to the year, and hence called *eponymus*; another was *polemarch*, or commander of the forces; and a third was called king, having the superintendence of religious matters. The other six were called *thesmothetæ*, having the guardianship of the laws, probably, with the patrician body, a legislative, and certainly a large judicial power. The whole government appears to have been in the hands of the nine, and they were elected by the patrician order, and out of their own body. The order had now obtained great power over the community. They had lent money to the poorer landowners, and by usury not only had amassed sufficient wealth to purchase almost all the land in the country, but had obtained the power of exercising great oppression over the inferior classes. There were no longer any considerable number of small proprietors, unless in the mountainous districts; and the country in consequence of the distribution of landed property was split into parties opposing each other with bitter animosity. These factions had continued from the time of Cylon, who, endeavouring to destroy the influence of the Alcmeonidæ family, descendants of the last hereditary archon, and to make himself tyrant or chief of the state, had failed in the attempt. But three parties were now formed—the *pedræi*, inhabitants of the plains, who were oligarchical; the *diacrii*, inhabitants of the hilly country, who were democratic; and the *paralii*, or those connected with the commerce of the coast, who wavered between the other two, but generally were said to favour a mixed form of government. The confusion which their proceedings first occa-

* Thucydides (i., 126) speaks of the nine archons as well established at the time of Cylon's sedition. But they must have been known from the time of Creon, the first yearly archon, which by the common chronology was 90 years, and by the Newtonian 45, before Solon. The former places Solon at the beginning, the latter about the middle of the sixth century before Christ.

sioned, induced the community to call upon Draco, a man of tried integrity and great capacity, though of a severe and unyielding temper, to prepare a code of laws, which till then they never had possessed; and when this was found ineffectual, chiefly because he had left everything untouched that related to the government and its administration, recourse was a few years afterwards had to Solon, one of the wisest and most learned men of the age. Being himself of a noble family, he obtained the confidence of the patricians, who seeing that some reform was absolutely necessary to prevent anarchy, were better pleased it should be in the hands of a man of their own order than intrusted to the common people. He was enabled to keep, and even to extend his favour with both the patrician and plebeian classes: with the former, by giving the constitution a somewhat aristocratic character in one important particular; with the latter, by a strong measure which he carried for relieving debtors not only from arrest, but from a considerable portion of their existing burdens.*

Of course everything that had existed before, as well as everything that he introduced into the institutions of the state, was afterwards ascribed to Solon. But it is demonstrated beyond all possibility of question that the principal feature of the government, the nine yearly archons, with their several departments, existed at least half a century before Solon's legislation,—that the Areopagus, though greatly improved by him, was established long before his time,—and that the chief doubt rests upon the existence of a senate in former ages, though some council of the kind probably was established. It is certain that he adopted the more important of the fundamental principles of the old constitution, and retained its most important parts. Then, as many things were ascribed to him which he found already established and only improved, so other things, which were introduced long after his age, were supposed to be parts of his plan. It becomes therefore very difficult to describe the government as he left it, and then to trace the changes which it afterwards underwent. We know that most of his institutions were preserved; that the usurpation of Pisistratus during his lifetime, and the supreme power which he left to his

* The *Seisachthia*, or relief from burdens, is variously understood. Some conceive it to have been an extinction or reduction of interest upon an increase of the principal, which seems improbable; others represent it as a raising the denomination of the currency; others as a partial amnesty.

family (the Pisistratidæ), did not change any of Solon's laws, and consisted only in their engrossing the chief of the offices which he had established;* that Clisthenes upon their expulsion, half a century after Solon, extended the influence of the people, new modelled the tribes and senate, and greatly curbed the aristocracy; † that Aristides thirty years later destroyed the last remains of the oligarchical power by opening all magistracies to the lowest class of the people; and that ultimately a republican government was established, though originally the form had inclined towards aristocracy. But the particular changes through which this event was accomplished we have no means of tracing, and it therefore becomes more convenient that we should at once proceed to consider the government in its last stage, when all the arrangements to which ancient writers refer had been introduced. We may, therefore, look at the constitution as it existed in Philip's time.

The names and many of the duties of the ancient magistrates were retained by Solon; but their powers were first in his time, and then by the gradual encroachments and final supremacy of the democracy, reduced within very narrow limits. They were all chosen by the people, and all held their offices for a year only. The principal change made by Solon in the form of their proceedings was that the archons before his time all acted separately—not merely the three first, but the six *thesmothetæ*; whereas he gave them the functions of two colleges, enabling them to sit together as judges. It should seem, however, that these six came to act chiefly in the capacity of judicial officers and guardians of the police of the city; the three chief archons presiding with two assessors each (*paredri*) in one or other of the ten high courts or tribunals in which civil and criminal justice was administered. In five of these courts the presiding archon chose by lot the other members of the court acting as jurors, and who generally amounted to five hundred, upon extraordinary occasions to twice as many in the more important court. In four of them, which tried homicides of different descriptions, the numbers were much

* Herodotus (i., 59) praises Pisistratus for his good and just administration of the government, and says that he changed nothing of its fundamental principles. Thucydides (vi., 54) praises the valour and wisdom of the Pisistratidæ, and says that they governed by the existing laws, always taking care to appoint themselves to the higher offices.

† The changes recorded as made by Clisthenes, except the ostracism, do not appear to bear directly on the oligarchy. Concerning Clisthenes, see Herod., v., 66-69.

smaller, and were taken from a list of fifty-one returned by the tribes. In one, the Areopagus, the places were held for life, and no jurors attended it. The person of every archon was held sacred, and any insult to him was punished by the loss of all civil rights. Their election was vested in the people, and, by the law of Aristides, abrogating that of Solon, every citizen was capable of being chosen. But every person chosen underwent two scrutinies; one before the senate, or rather a select body of the senate, the *prytanes*; the other before the tribunal of the *heliasts*.* They must show that they were descended of Athenian parents for three generations, that they had borne arms in the service of the state, and that their domestic character was free from reproach. At the end of their year they were eligible to the Areopagus upon passing their accounts, and undergoing a new scrutiny as to their official conduct.

Of the inferior magistrates, some were chosen by the people, and others by lot. Most of these magistracies were in the hands of ten persons, each tribe choosing one either by election or by lot, and none held his office above a year.

The various officers possessed some, but only a moderate degree of influence; the archons chiefly, when they could agree and act in one body. But the government could hardly be said to be administered by them at all. They were in truth the servants or instruments of the great councils, the Assembly, the Senate, the Areopagus, and the *Helizæ*, all of which bodies being chosen annually, and chosen by lot, except the Areopagus, the government might truly be said to be directly administered by the great body of the people. In what manner this administration was carried on we are now to see.

The first division of the people is that into natives, foreigners (*metæci*), and slaves. The numbers of the Athenian people have given rise to considerable dispute among antiquaries and political reasoners. Mr. Hume, in arguing against the supposed populousness of ancient nations,† estimates the free inhabitants of Athens at 84,000, the foreigners at 40,000, and the slaves at 160,000 only. But though he probably comes near enough the

* The *ανακριται* seems to have come before the election; the *δυναμειν* after. The former tried the qualification, as citizenship by three descents; the latter scrutinized character.

† *Essays*, Part II., 2.

truth as to the two first classes, there is every reason to believe that the slaves were much more numerous; according to the most credible accounts 400,000.* The treatment which they received was very different from that of the Spartan slaves, still more from that of the serfs or helots; it appears not to have been extremely severe. Yet we may remark the extent to which slavery had perverted the feelings of even the worthiest and most humane persons from the manner in which such a writer as Xenophon speaks of the servile condition. He mentions the insolence of slaves, and, indeed, of foreigners, whom he treats as if they belonged to the class of freedmen, if not of slaves; and he seems almost to complain of the law which prevented beating them,—that is, beating another man's slave to repress his insolence,—assigning as the only reason for the prohibition that otherwise there would be a risk of beating free citizens, who could not be distinguished from slaves by their outward † appearance. It is another proof how deeply rooted the existence of slavery was in the minds of the Greeks, indeed of all ancient nations, that free citizens of all their own states might be sold into slavery, and held as slaves equally with foreigners, or, as they were termed, barbarians. Plato himself was, in returning from Syracuse, sold into slavery by the perfidy of a Spartan ambassador, acting in league with the tyrant Dionysius, to whom the philosopher had given some offence: he was ransomed for about a hundred pounds. Diogenes was sold by pirates, who captured the vessel he was sailing in; and refusing to be ransomed, he passed the rest of his life in slavery, but as the instructor of his master's children.

The whole people were divided into ten tribes (*phylæ*), Clisthenes having changed the ancient division of four into ten. Each of the four ancient tribes was divided into three vestries or *phratriæ* (resembling the Roman *curiæ*), and each *phratría* into thirty families (*geneæ*). The ten tribes, which were local, were made up of demî. There was a division of each of them into three parts, called *Trityes*. These divisions seem to have been chiefly subservient to the sacrifices and other religious solemnities, like the Roman division of gentes. There was another division into dis-

* Mr. Hume's arguments have been refuted by other writers. See particularly Clinton's *Fasti Hellenici*; and he may have been misled by the supposition that the passage in Athenæus refers to the proportion of slaves fit to bear arms.

† Xen., *De Rep. Ath.*, cap. i.

tricts or villages called *demi*; and this had a reference to the enrolment of the citizens; for no one could claim his civil rights unless he belonged to a *demus* and a *phyla* (a village and tribe). There were officers at the head of each division and subdivision: over the tribes there was a *phyllobasileus*; over the vestry a *phratriarcha*; over the village a *demarchus*. This division was also subservient to the military system, the tribes raising each its quota of men, and commanded by the phylarchus, and those of the subdivisions, *demi*, under the several *demarchi*. A classification of another kind had, however, been made by Solon. He not only retained but extended the aristocratic principle of the older government; but he substituted an aristocracy of wealth for the old one of birth. He divided the citizens into three classes according to their income, as they had an income of five hundred, three hundred, or two hundred bushels of grain. From these classes alone could magistrates and senators be chosen: all the inferior orders formed a class by themselves, excluded from political office, but allowed to act as a kind of jurymen, in assisting the magistrates at the trial of causes, and allowed also to sit and vote in the assembly of the people (*ecclesia*). Aristides abolished all distinction between the classes, making every one eligible to all offices.*

In that assembly (*ecclesia*) the whole legislative as well as administrative power was lodged, subject only to the powers of the archons as executive and judicial officers chosen annually by the assembly. Peace and war, alliances, taxes, expenditure, legislation, were all intrusted to the same body, which likewise chose all the superior magistrates, the inferior ones being selected by lot. To the assembly, also, were all magistrates responsible for their official conduct; liable to be tried before it by impeach-

* G. Postellus, *De Rep. Ath.*, c. 21. This treatise gives a distinct and concise summary of the magistracies, but it is written with a political bias, at least with frequent reference to Venice.—J. Meurs., *Solon*, cap. 14—Car. Sigon., *De Rep. Ath.*, ii. 2—J. Meurs., *Attic. Lect.*, v., 20.—In some writers there is a reference to J. Pollux on the Census of Solon; and there must be an error, possibly in the editions (*codices*), as great as any of those corrected by J. Meursius in his various most learned treatises. It is said that the first class paid a talent in taxes, the second half a talent; yet the whole income of the first was five hundred bushels, and of the second three hundred, which at five drachmas a bushel (the price cited in various places) would make the whole income of the one class eighty-four, and of the other fifty pounds, out of which they were to pay nearly two hundred and a hundred pounds respectively. This subject is elaborately examined in Beekh's *Public Economy of Athens*, book iv., sect. 5.

ment, and to be punished by its sentence. This assembly met four times in every prytaneia of thirty-five days, or about once every nine days; but it was called together on any occasion that required its interposition, either by the senate or by the chief archon, or by the military commanders with the senate's permission. The checks upon its power were originally considerable; and some of them continued at all times, though some had ceased to operate. The president (the *epistata*, or chief of the *proedri*) was always a member of the senate, and it was he who generally brought the business forward. No resolution could be taken by it unless the senate had previously sanctioned it by its vote. A measure adopted by the senate was valid and binding for one year, whether the assembly confirmed it or not; but no decree of the assembly could bind till the senate confirmed. But as the power of the people increased, even though the senate, having so much to hope or fear at their hands in the amount and distribution of magistracies, became extremely subservient to the assembly, yet the latter, not content with their influence, by degrees assumed the direct power, not only of rejecting the senate's propositions, a power which they always possessed, but of making decrees and laws to which no previous sanction of the senate had been given. To sit and vote in the assembly required no qualification, except being twenty years of age and a native Athenian; but whoever was degraded by any infamous crime was incapacitated from attending; and it was a capital offence for a foreigner to be present. The ordinary meetings were thinly attended, and it was often necessary to send officers around for the purpose of compelling those in the street to come in under pain of being fined. The strict rule required six thousand to be present when personal laws, as decrees of banishment or naturalisation, were made; but Thucydides tells us that, for many years of the war, so many citizens had been abroad on service or on business, that it had never been found possible to assemble five thousand. The expedient of giving pay to such as attended was latterly resorted to; and four pence a day was found sufficient to attract the poorer classes. On great emergencies all the citizens, that is, all the people of Attica as well as the townsfolk, were summoned.* It was some check upon their proceedings that the old were allowed to speak first, and for some ages no one under fifty could begin a

* Thucyd., vii. 72.

debate. It was a more effectual practical restraint that, though every one had a right to speak, hardly any one ever thought of it but the appointed orators of the state. But the proceedings were generally as tumultuous and as noisy as might be expected in these circumstances.*

The Senate was probably at first the council of the king, and then of the archon; but when that office became annual, the senate's authority must have greatly increased. Solon appears only to have increased its numbers, and made its power more solid. The chief prerogatives of the government being afterwards transferred to the popular body, the senate had much less influence than before; but it always retained considerable weight in the administration. Solon had required that every resolution of the popular assembly should first be sanctioned by a decree of the senate; but this afterwards ceased to be the law. Yet the ordinary course of proceeding was that both should concur, and it was held to be a principle of the constitution that the senate's decrees had, without any confirmation by the popular assembly, the force of law for a year. Certain questions seem to have been reckoned its peculiar province, and those of great importance, as peace and war, the raising of money for the public service, the care of the navy, and of all matters concerning the religion of the state. But it entertained apparently all questions of a public nature. Its jurisdiction as a court was exceedingly confined. If any case of a pressing nature arose, not admitting delay, the senate considered it, and either sent it to be tried by the ordinary tribunals, or inflicted a fine, in imposing which it could not exceed five hundred drachmæ (about 15*l.*).† It had the power of expelling its own members, as well as of deciding upon their qualifications when returned.

The numbers of Solon's senate were four hundred; Clisthenes raised them to five hundred; and they were chosen by lot from all the tribes. Each tribe returned fifty‡, and fifty more as substitutes,§ to take the places of those who might die, or be found disqualified on the scrutiny. On being so returned each person underwent a scrutiny (*docimasia*) as to his character and life, and he might afterwards be impeached before the senate itself for any-

* U. Emmius, *Vet. Græc. (Rep. Ath.)*—Car. Sigon., *De Rep. Ath.*, ii. 4.

† Demosthenes expressly states this to be the limit of its judicial power.

‡ *Ἀρχοιται*.

§ *Ἐπιλαχονται*.

thing tending to disqualify him, as we see in some of the orations that still remain.* The five hundred being chosen were divided into bodies or sections of fifty each, who presided in their turn, each of the first four sections for thirty days, each of the other six for thirty-five. The presiding section was termed the *prytanes*; and there is some controversy as to the manner in which the presiding officers of the sections were chosen. One opinion seems to be, that each section divided itself into five bodies of ten each, and that each of the first seven of each ten was the chief, or *epistata*, in his turn presiding one day in the senate, while the other three of each ten were left out altogether.—Another opinion is, that thirty-five or thirty-six of the prytanean section were, each in his turn, *epistatæ* of the *prytanes*, and consequently presided one day in the senate, while the *epistata* chose by lot one from each of the other nine sections, not being *prytanes*, and these nine were the *proedvi*, who presided at the general assemblies of the people.—All accounts agree in this, that no one presided above a day in his turn, and that all the selections were made by lot. The president of the senate, of whose authority the jealousy was thus great, generally opened the business for their consideration; and he kept the great seal of the state as well as the key of the citadel and treasury. The *prytanes* formed a kind of college during their month, and lived at the public expense in a place called the *tholus*, close to the senate-house, entertaining there the public guests and any citizens who received that high honour for their services. It was the duty of the *prytanes* to receive all proposals of a political nature from every quarter, to reduce them to writing if deserving attention, and to lay them before the senate. They prepared the business generally for that body, and their president (*epistata*) opened it to the meeting. Any proposition of a legislative kind, made in the senate, was referred to them. Some have supposed that the scrutiny into the conduct of magistrates was performed by them; † this seems doubtful; but certainly they are represented as exercising great authority in the administration of public affairs from

* Lysias, *In Philonem*—passim.

† J. Laurent, *De Rebuspub.*, cap. i. An account sometimes given of the matter is this:—The scrutiny into the conduct of magistrates was conducted by the *isotriai* and *λογισταί*, officers appointed for that special purpose; and if there was ground for a charge of malversation, the *λογισταί* brought the case before an ordinary court of justice, in which they presided on those occasions, and the *isotriai* seem to have acted as public prosecutors.

their weight in the senate. The daily pay of a senator was double that of a person attending the assembly, about eightpence sterling.

The voting was generally by the bean, or ballot in later times. Originally it was, as in the assembly, by holding up the hands.* The ancient authorities are full of allusions to the ballot, of which two are remarkable. Demosthenes says that the law required, when a foreigner was to have the rights of citizen conferred on him, that the voting should be not only by the bean, but so secretly, before strangers were admitted (that is, foreigners), that every one might be entirely master of himself, and examine in his own mind the merits of the party.† Æschines says that the senators had excluded Timarchus, voting by the leaf, that is with the names written down, but retained him afterwards voting by the bean; for which the people punished them by withholding the olive crown,‡ the reward given to senators on quitting their office.

It is here obvious to remark, that if the choice of the senate and of all those who presided in it, as well as in the assembly, were really made by lot, as was professed, there could have been no security whatever for the selection of fit persons. The scrutiny could not have been at all effectual for this purpose if it be true, as is represented, that only an equal number of supernumeraries (ἐπιλαχόντες) were returned. For how is it conceivable that out of twenty thousand individuals, the great majority of whom were of the lower description, the lot should fall upon only five hundred unfit persons in the one thousand returned? The probability certainly is, that seven hundred or eight hundred out of the one thousand should be unfit for the office. Possibly the inferior classes,

* Car. Sigon., *De Rep. Ath.*, ii., 3.—G. Postelli, *Rep. Ath.*, c. 7.—U. Emmius, *Fet. Gr. (Rep. Ath.)*.—Thuc., viii., c. 69. Plutarch (*Vit. Publicolæ*) says that the senate existed before Solon, but he doubted its numbers.

† Καὶ οὐκ ἂν αὐτοὶ αὐτῶν ἑκάστης ἐκείνης πρὸς ἑαυτοὺς ἴδοντα μάλιστα, &c.—*In Notæ*. ap. Reiske, *Cr. Gr.*, ii., 1375. He speaks of it as if the common voting by bean was not a complete ballot—ψηφίζομαι and κερβάνει ψηφίζομαι are here as elsewhere apparently distinguished. The main difficulty of the passage, however, is in the γίγναι ἀκαρίων, which some have read as if it were that screens were raised to protect the voters from observation, and others as if the only reference were to the booths being taken away before strangers were admitted, while Wolfius and others read it γίγναι (qu. γίγνεται), i. e., taking up (ἀκαρίων) the freedom, or honour conferred. Yet it seems not very sensible to state that before the vote conferred the freedom, the freedom could not be taken up.

‡ Æsch., *In Tim.* The unpopular course was clearly the one they took when voting more or less secretly.—Reiske, *Or. Gr.*, iii. 129.

though possessing the right, did not enroll themselves so as to be chosen to the senate, and were satisfied with being so enrolled as to have a right to attend the assembly. We can else with difficulty understand how any body could be thus formed resembling a senate in its character and functions.*

The Areopagus was a body of a very different construction, and it must have exercised a great influence over the proceedings of the assembly, if it had not a direct control. It is a remark of Plutarch that Solon, by these two councils, the Senate and Areopagus, made the commonwealth fast as by two anchors, in the popular tempests. He certainly did not for the first time erect the Areopagus, but he greatly extended its jurisdiction; and from other passages of the same writer it is clear enough that he only referred to the changes made by Solon in both these bodies.† Before his time the Areopagus had only a high criminal jurisdiction; he gave it a general censorial power, enabling it to punish by censures and exposure, and also by penalties, all transgressions against the rules of morality and all infractions of the customs of the country. This important office it continued to discharge for about a century, when Pericles abolished it, and confined the jurisdiction to criminal matters and a general superintendence of the other tribunals, from all of which there lay an appeal to the Areopagus. It appears also, in sending causes to be tried by them, to have had a jurisdiction in the first instance. From its ancient respectability, from the high powers which it still possessed, and from the higher which for many years it had exercised, with universal approbation for its rigid justice and its humane spirit, this body retained a great weight in the community;

* Xenophon's opinion of the Athenians and their government was sufficiently low. "These folks," said he, "can easily distinguish good citizens from bad, and they like such as serve their purpose, how worthless soever they may be, hating public benefactors, as deeming that merit is rather hurtful than profitable with the multitude. Not that all this is to be blamed in the people themselves; every one has a right to pursue his own interest. But when you see any one not of the people prefer to live in a state subject to popular dominion rather than in one where an oligarchy is established, you may rely on it he does so from no good motive, but being determined to act amiss, he thinks he can better escape detection under a democracy than an oligarchy."—*De Rep. Ath.*, cap. ii.

† We may probably so understand also the passage in Cic. *De Off.*, lib. i., in which he compares Solon's institution of the Areopagus to Themistocles' victory at Salamis. Demosthenes treats the origin of the body as lost in fabulous antiquity, and describes it as having tried Mars for the murder of Hecrothus, on the complaint of Neptune. (*In Aristoc.*) J. Meursius clearly shows that the Areopagus existed before Solon. (*Areop.*, cap. iii.)

it occasionally interposed its authority on questions of a political nature, even after the time of Pericles. It was the highest and most venerable of all the tribunals. Even foreign states have been known to appeal to it, and refer their disputes to its arbitration. But what especially made its power and its proceedings of importance was the independence which alone, of all the constituted authorities, it appears to have enjoyed. It was the only body not immediately dependent upon the people; and this makes it the more to be lamented that several particulars in its structure and operations have been left unexplained by ancient writers.

The members were appointed for life, all the other magistrates being of annual nomination. They were chosen from those who had been archons, and who, on quitting office, could undergo a severe scrutiny, both as to their accounts, as to their whole conduct in the magistracy, and also as to their whole previous life. They were required to be well born, to have received a good education, and to have distinguished themselves by their public services. They must also have been of mature age: what that age was we are not told; nor is it anywhere asserted that there was any fixed period assigned by law; neither does it clearly appear before whom the scrutiny was made, in whom the decision was vested, or that there was an appeal from it if unfavourable. The *logistæ* are represented as examining the ex-archon; but so they examined every one retiring from office. The *logistæ* were ten persons of great knowledge and respectability, chosen yearly, one from each tribe, before whom every magistrate was bound to appear, and render an account of his public conduct, within thirty days after the expiration of his office. In all probability the inquiry was originally confined to matters of account; but it seems clear that afterwards a more general investigation was entered into. *Æschines* distinctly shows that those who had no public money passing through their hands, nay, those who, so far from being public accountants, were, like the *trierarchæ*, persons chosen to undertake an expense for the public, were subject to this revision; and he asserts that the members of the Areopagus itself (who could have 'no * handling of money) were liable to be examined by these *logistæ*.†

* *Æsch.* In *Ctes.*—Dobson, viii., 173. When he adds that the Areopagus performs its high functions subject to the votes of the *Heliastæ* (*καταμαρτυροῦσι τὰς μετὰ τὴν ἀρχὴν ἐκείνην ἐκδοχὰς*), he means that the members might be impeached at the instance of the *logistæ*.

† There either were other magistrates of a similar kind called *euthynæ*, or this is another name for the *logistæ*. The difference between the two is mentioned by some

The logistæ had no power of passing a sentence; they could only acquit or send to trial those whom they examined; but their acquittal was not final; the party might afterwards be brought before the helica and condemned. The examination or scrutiny of the ex-archons, therefore, was a necessary proceeding, whether they were candidates for the Areopagus or not. The probability is that the Areopagus itself decided, taking into consideration, no doubt, the report of the logistæ; but it is generally agreed that the claim of the ex-archon to his place was irresistible if he possessed the qualifications required. As they had enjoyed the popular favour the year before when chosen archons, the Areopagus was not likely to reject them if their merits were manifest.*

The numbers of the Areopagus were necessarily uncertain; but it is singular that the ancient writers afford us no means of ascertaining how many they generally were. Sometimes they are said to have been thirty, at another time fifty-one; but if, as is generally supposed, Socrates was tried before them, the number who concurred in his sentence was above three hundred and sixty; and we are also told that before the eighty, who changed their opinion, went over between the trial and the sentence, the majority was only three. This would suppose a very numerous body, more numerous than the senate. Now nothing can be less likely than so numerous a body retaining at all times the extreme veneration in which they were held by a people as fickle as critical; not to

and denied by others. If they were different, probably the one class was confined to examining the accounts.

* In the second oration against Aristogiton, we find it distinctly stated that the thesmothetes were excluded from the Areopagus by the decree of the people—that is, the assembly. The argument is that they, when excluded, quietly submit—*ταῖς ἐπιταγαῖς ὑπακούουσιν*; and the charge against Aristogiton which the orator was mainly bringing was his insolence to the people, and setting himself above their authority—*ὅτις ὑμᾶς φέρων* (*In Arist.* ii. 2, 3). The two orations against Aristogiton are indeed by many denied to be genuine, especially the second, though Longinus and Pliny seem to have had no doubt about it; but whether they were Δ's or Hyperides's can make little difference as to their authority on the present question. The orations were plainly made in the assembly, and not in either the senate or Areopagus. It is singular that J. Meursius (*Areop.* cap. v.), in showing the error of those who suppose the three chief archons to have been excluded from the Areopagus, and only the six thesmothetes admitted, has overlooked the strongest proof of all, the argument of Lysias (*In Evandrum*), who contends that the senate should not allow Evander to be second archon (or King of the Sacrifices), because, though that office is only annual, it gives the holder a right to the Areopagus, which is for life. He even seems to say that this admission would be a matter of course, probably conceiving this previous scrutiny, and its favourable result, to be taken as binding at the end of Evander's year of office.

mention the impossibility of so large a number resulting from the annual election of a very few persons, probably advanced in life. Either then there must be some error in the texts, or Socrates must have been condemned by another tribunal, probably, as we shall presently see, the *heliastæ*.

The meetings of the Areopagus were held on the hill dedicated to Mars, from whence their name * was derived. One or more of the archons presided, and propounded the business at each sitting. The sittings were in the night; no advocate or party in addressing it was permitted to declaim or use any rhetorical artifice. The decisions were given by ballot. The person tried could not be sentenced the same day; and if he chose to fly, though on his trial for a capital offence, as murder or treason, neither the prosecutor, nor any magistrate, nor even the court itself, could prevent his escape. Sentence of outlawry and forfeiture was alone given against him.

Some have maintained, and J. Meursius among the number, that an appeal lay from the Areopagus to the assembly, as it certainly lay by Solon's laws from all other tribunals; and some passages have been adduced to prove this. But there seems little probability that it was so, and the passages are not unequivocal and decisive. Its high functions would seem to preclude this appeal; and learned men have held that the sentence being final, was one reason for St. Paul being dragged before it. But the true reason was, because at that period the Areopagus had the jurisdiction respecting the introduction of foreign gods. It is said that there are proofs of the decisions pronounced by it being reversed in the assembly, or rather by the *Heliastæ*. When these cases, however, are examined, it seems doubtful whether there had really been a judgment of the Areopagus, or only a report putting the party on his trial. This is at least certain, that in some cases it was armed with authority to pronounce a final sentence; that in others it appears only to have begun the prosecution; while in others it could review the decision of the *Heliæa*, and put a person on his trial a second time who had been acquitted. But even those who maintain that an appeal lay, admit that when the Areopagus did pronounce a sentence, there was hardly an instance of its giving dissatisfaction; and the passages are clear which

* *Ἄγιος πᾶσις*, Mars's hill, as it is sometimes translated, e.g. in the New Testament relating to St. Paul's trial before this Court (*Acts*, xix.)

represent that even the parties against whom the decision was given always acquiesced. Some say * that convicts always confessed they were rightly sentenced. Demosthenes himself, who did not go so far, yet says † that there never was an instance either of a prosecutor who had failed, or an accused person who had been condemned, being able to show that the Areopagus had decided erroneously. Practically speaking, then, their decisions may be considered as having been final. ‡ It appears that in some cases the Areopagus itself referred matters to the other tribunals, probably the Heliæa, notwithstanding that they had final jurisdiction respecting them. § How great was the influence of the Areopagus with the people appears from many instances. On one occasion, when a vote of the assembly had passed over Phocion, always unpopular with the multitude, and given the command of an expedition to their favourite Charidemus, the Areopagus went among them, and by their authority obtained a reversal of the ill-considered decision, and the appointment of Phocion. ||

Next to the Areopagus in importance was the court of the Heliæa, or the Heliastæ, which does not seem to have been a court of ordinary jurisdiction in criminal cases, but to have had special jurisdiction in these as it ordinarily had in civil cases, and to have had all important cases respecting the state and political offences brought before it, as part of its special and extraordinary jurisdiction. There seems good reason to think, notwithstanding the

* *Lyc., In Leoc.*

† *Dem., In Aristoc.*

‡ Dinarchus in Aristogiton's case treats his complaint of the Areopagus as something quite extravagant, and as more strange than all the rest of his conduct; but it is by no means clear that it was an appeal—*ἀντιδικήσας τῇ βουλῇ περὶ ἀληθείας*. (*Reiske, Cr. Gr., Din. 77.*) The whole oration is an attack on the party for strange and unheard-of conduct. The proceeding in which Demosthenes was tried and banished seems to have been only a report of the Areopagus, by whose award he had rashly said he should be bound: it was given unanimously against him, and sent the case apparently to be tried before the Heliæa. Dinarchus calls the proceeding in the Areopagus *αποδίξις*. (*Reiske, Cr. Gr., Din. 3.*) He speaks of a decree of the assembly on a former occasion, making the decision of the Areopagus final (*ib. 58*). From another passage it seems even possible to suppose that the Areopagus decided on the question of guilty or not guilty, and that the case was then sent before the other tribunal to fix the punishment (*ib. 75*). It is singular that Plutarch (*Vit. Dem.*) only mentions the proceeding in the Areopagus, and neither in the life of Demosthenes nor of Dinarchus (*Vit. x. orat.*, if that work be his, which seems more than doubtful) does he make any mention of the proceeding before the Heliastæ, which condemned and banished Demosthenes.

§ *Æschines, In Tim.*

|| *J. Meurs., Solon.—Id., Areopagus.—Car. Sigon., De Rep. Ath., ii., 5.—G. Postelli, c. iv.—U. Emmius, Vit. Græc., De Rep. Ath.*

prevailing opinion of antiquaries in favour of the Areopagus, that the Heliæa sentenced Socrates; and the reference made to his trial by Æschines, when he says, "the people whom he is addressing put Socrates to death," may very reasonably be accounted for by the circumstance of the same people forming also the court of the Heliastæ. These were chosen by lot, and for the particular occasion, as it appears; the archon, to whom complaint had been preferred, and sometimes the Areopagus, directing a trial before them. The number varied according to the nature and importance of the cause; it seems never to have been less than 500; sometimes 1000 or 1001, and sometimes as many as 1500. The charge against Demosthenes was tried before that number, as Dinarchus expressly states in his oration addressed to them, that they were so numerous; * and if there be no error in the text, Andocides, referring to his father's prosecution of Speusippus, says there were 6000 present on that occasion.† It manifestly was only another, and a somewhat less promiscuous assembly of the people than the ecclesia. It was less promiscuous, because the age of thirty was required, and the numbers were taken apart from all the rest, though taken by lot. The number was fixed on each occasion by the archon. It was on account of its great number, and the magnitude of the causes which came before it, reckoned the highest court; but as it only met rarely, and as the Areopagus was a permanent tribunal, beside its weight on political matters, its superior importance is manifest. A solemn oath was taken by all the judges, or rather jurors, of the Heliæa, binding them not only to judge according to the laws and the evidence, but also to maintain the established government, to resist all attempts at an extinction of debts, a division of real estates, the establishment of a tyranny or an oligarchy, or the undue election of magistrates; so that though assembled for the trial of a cause, they appear to have interfered, at least as incidental to the subject matter of their jurisdiction, with many of the most important branches, both legislative and executive, of the administration. Thus they were evidently called upon to repeal illegal decrees, and even to abrogate laws that had been made irregularly and unconstitutionally; because when any one was tried before them

* Reiske, *Cr. Gr.* iv., Din. 72.

† *Ib.* iv., And. 9. He speaks of it as a court of 6000. Και ηγασμενο το ιξκασιχιλοις Αθηναιω και μειταλαβι δικαστων τουτοναι 2000.

for having caused such a law to be passed, its repeal, as well as his punishment, was sought by the articles of the charge. In this respect they appear to have had a jurisdiction somewhat resembling that of the Federal constitutional court in the United States of America. There is every reason to suppose that most of the great political causes of which we have any account were tried before this tribunal.

The *Ephetæ* were, next to the *Areopagus*, the most ancient of the judges, being, in the time of the kings, fifty Athenians and fifty Argives, who tried all crimes of homicide. In Draco's time they were reduced to fifty-one (to avoid the chance of equal division), and the Argives no longer formed part of the court. Afterwards each of the ten tribes chose five persons of the age of fifty at least, and of unblemished reputation; another was added by lot. These judges formed four courts, called the *Prytaneum*, *Phreatrium*, *Delphium*, and *Palladium*, which tried the different kinds of homicide; the *Prytanes*, for example, that which was occasioned by animals, or by inanimate objects. Solon is supposed to have given extended powers to the *Areopagus* as a counterbalance to the influence of the *ephetæ*. Some have confounded this tribunal with the senate, misled by the *Prytaneum*, which formed one of its divisions.* But the members, as well as its functions, were totally different. These *Prytanes* however, that is, the tenth part of the senate in rotation, beside presiding by their *epistatæ* and *proedri* over the senate and the assembly, exercised, as we have seen, great powers, but not apparently any judicial functions.

* J. Stephanus, *De Jurind. Vet. Græc.*, cap. iv. In cap. iii. the learned author treats the court of the *Prytanes* as the senate, and there is no inaccuracy in so doing, the senate having civil jurisdiction. But in cap. iv. he gives the same court jurisdiction as to homicide by animals and inanimate objects, which belonged to the branch of the 51 under the archon called king. He supposes Socrates to have been tried in the *Prytanes* or senate.

CHAPTER XVII.

GOVERNMENTS OF GREECE—ATHENS.

(Continued.)

Other checks beside the Areopagus—State and Public Orators—Payment of Functionaries—Rules as to Alterations of the Law—Nomothetes—Syndics—Direct Repeal required—Impeachment for illegal Legislation—Quorum—Prohibition of Repeal—Power of Adjournment—Variety of Bodies—Appeal, and reconsideration—Ostracism—General feeling against these—Orators; their influences—Advocates and Professional Orators—Legislative and Judicial Functions combined—Corruption of Statesmen—Demosthenes—Whigs in Charles II.'s reign—Demades—Corruption, faction, and fickleness of the People—Turbulence of Assemblies—Radical vices of the System—Advantages derived from the System.

SUCH were the constituted authorities of the Athenian system, resolving themselves all, more or less, immediately into the bulk of the people; and we are now to consider in what manner any control or check was provided, beside the Areopagus, to render the working of the machine regular, and keep it subject to any fixed law, or any influence other than popular caprice.

1. The appointment of public orators may be deemed some kind of check upon the popular proceedings, though it perhaps rather evinces the great sense which there was of some check being required, than the efficiency of the expedient resorted to. Ten orators were chosen (latterly at least, by lot), who both in the senate and the assembly were to debate for the people, representing their interests, as it were; and they were paid a small sum each time they spoke.* They appear to have undergone a scrutiny before being allowed to act as orators, probably before

* It was one drachma, or eightpence. Nothing is more puzzling than the small sums which appear to have been received as adequate payment for public services, and to have been eagerly sought after. Three oboli (four pence) a day for attending the assembly; for the senate, six oboli; nay, only the same for the Areopagus itself when sitting judicially.

they were drawn by lot; and any immoral conduct, or political or other offence, or any misbehaviour in war, precluded them from being chosen. They were also required to be natives, born of Athenian parents, to have one or more legitimate children, and to possess property in Attica. The same character and qualification, ascertained by the same scrutiny, was required of all others who would address the assembly, as well as of the Public Orators; and whoever succeeded in concealing any part of his former life from the court which examined him previous to his admission, was liable to be punished, as well as disqualified from acting in future, upon the imposition being discovered. In practice, hardly any one but the Ten Public Orators ever addressed either the senate or assembly; and this, as well as what has been stated respecting the choice of the senators, makes it very difficult to conceive that the lot really decided upon all these elections. Practically there may have been some arrangement or understanding by which the names of comparatively few of those eligible were placed in the urns.

2. The strict rules, however, respecting alterations of the law were a much more effectual check upon the wild democracy of the Athenian constitution. Fortunately a tolerably exact account of this is given in the orations which remain of Demosthenes and Andocides; an account which, if it is far from explaining every particular of the legislative process, yet shows clearly that there were delays interposed, and notices required to be given, which afforded an opportunity for reflection to the people themselves, for the exertion of such influence over them as the Areopagus possessed, and for the operation generally of the authority that always resides in the Natural Aristocracy of the community. The constancy with which the Athenians adhered to these rules rather than their original adoption, which was probably owing to oligarchical influence, is a proof how conscious they were of their own unfitness to be trusted with the supreme power, of the little reliance which they had upon themselves.

The three first assemblies each year were devoted to the consideration of new laws; but the two first of the three could only consider of such as were not repugnant to any law already existing. The proposal of a repeal or other law inconsistent with the old was then received, but it was rigorously exacted that no such law should be propounded without a previous repeal of the old. As soon as the proposition was made the senate appointed a num-

ber of persons called *Nomothetes*, or law-makers (some think fifty*), not by lot, but by selection, to digest and reduce it to writing. In that form it was laid before the Prytanes, who were to make it public by immediately affixing it to a portico in a frequented part of the city, called the *Eponymi*, or Statues of the Ten Heroes. It was required to be thus placarded daily until the assembly again took it into consideration. Other nomothetes, said to have been five hundred, and chosen by the districts who returned the senate † (the *demi*), then examined it, as did the senate itself. All the nomothetes must have served as *Heliastæ*, and taken the solemn oath of these judges. Then five persons were chosen, but not by lot, called *Syndics*, whose special duty it was to defend the old law, and of consequence to resist the introduction of the new. Finally the assembly, on the full discussion of the question, determined upon adopting or rejecting the proposition.

3. But another important restraint was imposed by positive law, and it operated at all times, and actively, though it was perverted, like everything else in that turbulent commonwealth, to the purposes of faction. It was criminal to bring forward any decree or any legislative measure which was contrary to the existing law: the first step to be taken was propounding a direct repeal. This of itself was a great security; inasmuch as men will often be averse openly and at once to abrogate an old law, or destroy an ancient institution, who would have little scruple about suffering it gradually to be undermined or indirectly assailed, and frittered away, as it were, by piecemeal. But suppose a person propounded a total repeal of the old law, he was compelled to substitute another in its place; and if this was not beneficial to the nation,‡ he was liable to be prosecuted at any time within a year, although

* Reiske supposes the word λ to have been originally the cipher for fifty (*Or. Or. And. de Myser.*, iv., 40), and he translates it so accordingly.

† There seems some reason for suspecting an error here, if not in the text, at least in the interpretation that has been given to it. Andocides says 500 nomothetes, $\text{ἑκατὸν πεντακισχίλιον}$ (Reiske, *Cr. Gr.*, iv. 40); and adds that they, meaning the nomothetes, were sworn before they proceeded. Demosthenes says they took the oath of the *heliastæ* (*In Tim.*), but he says nothing of their appointment. If the *demi*, as Reiske supposes (*viii.*, 336), actually elected the nomothetes, it is the only instance known of their making any choice; ἑκατὸν would describe the people, indeed, the assembly as well as the *demi*.

‡ ἐνστάσις ἐν νόμῳ . (*Dem. In Timoc.*) The proper meaning is fitted—well adapted. But in which way soever we translate the word, the argument must remain the same.

the people and the senate should have sanctioned his proposition and passed the law—nay, although the same should have been acted upon. If his proposition, being adopted, had proved ever so beneficial, he was liable to prosecution unless he had brought it forward and carried it according to the strict forms of legislative procedure, having regard, among others, to the important rule which required direct repeal, and prohibited any indirect breaking in upon the existing law. Thus the responsibility under which the supreme power, the people and the senate, could not be placed, was cast upon each member of the community who chose to put that irresponsible power in motion. Every person, be he ever so insignificant, was entitled, on this condition, to make what proposals he pleased; and no person, how powerful soever, was exempt from prosecution for his attempts to change the law, or to obtain decrees inconsistent with its principles. Nor was the concurrence of the state itself any guarantee of his safety. The same body which to-day joined in carrying his measure, might some months hence, nay some years hence (for it sufficed if the prosecution were commenced within the year, the trial might be at any time*), join in working his ruin, and that without any original fault on his part or on theirs; because all might have been formally done, and the event might still prove the change to be hurtful. It is no wonder that the orators and party chiefs at Athens stood in great dread of such a proceeding, and regarded with the most serious apprehension the responsibility which they thus incurred in the discharge of their public duty, if you will, but certainly in the pursuit of their own ambitious objects.

This species of prosecution or impeachment was termed *γραφη παρανομων* †—charge or accusation of illegality; and it was in constant use between the contending parties, or rival statesmen

* The most elaborate prosecution of this kind, of which we have any knowledge, that of Ctesiphon for obtaining the decree crowning Demosthenes, was commenced indeed within the year, but argued and decided after seven or eight years had elapsed, and the most important events had entirely changed the face of things.

† There appears to be some doubt whether this prosecution could be maintained against a person who had only attempted to carry an unlawful measure; and if we were to take the passage in Andocides so often referred to as some have understood it, there appears a colour for the opinion that the attempt was sufficient. But the word *βουλευσι*, which is rendered *senator* by Reiske and others, seems to imply more. It is coupled with *παράλλουσι τη δικαστηρίῳ*, and may therefore be taken to mean that Speusippus had by his counsels obtained a decree of the senate putting Andocides's father on his trial. Had it been *senator*, the expression would rather have been *βουλευτῆς* *δυν*.

and commanders, down to the time of the Thirty tyrants, who abolished it. The greatest orations of the two first orators of any age, Demosthenes and Æschines, were delivered upon trials of this description; and some others of Demosthenes, hardly less noble, were prepared by him upon similar occasions to be delivered by different parties, it being the practice at Athens for private accusers to deliver speeches prepared by professional orators, as well as to defend themselves when charged, in those instances in which advocates were not allowed. Some doubt hangs over the question which of the tribunals had cognizance of this charge. There seems no doubt whatever that the great case of Timocrates was tried before the Heliastæ, and the probability is that the case of Aristocrates was also tried by them. There can be very little question that the case of Ctesiphon was disposed of by the same tribunal.*

4. Some additional check was interposed by the rule which was laid down as to the numbers whose concurrence was required in the kind of proceeding most likely to be influenced by popular violence. It was a rule constantly in force that no law could be passed to affect any one person without affecting equally the whole people, unless 6000 persons were present at the least. Beside the general law, many instances occur of this number being specially required by other laws, not indeed to join in the vote, but to vote in the question. Thus the admission of an alien to the rights of citizenship,†—the restoration of those citizens who had been disqualified by crimes or default—the remission of any debt‡ due to the public—are cases provided for by particular laws; although they all appear to come under the description of personal laws or decrees, and might therefore have been supposed provided for by the general law. It is to be observed that

* Demosthenes (*In Timoc.*) quotes a clause in the senator's oath, and then, to show that it does not bind those to whom the speech is addressed (*ἐμὰς*), he has the Heliast's oath read, in which the clause does not occur. This oration was made for Diodorus, the prosecutor of Timocrates, as the one against Aristocrates was made for Ræpocrates. The address is throughout in this to the Athenians, as in the two orations on the Crown, except in a single instance. But that is not decisive; for the large judicatures were always addressed as the Athenians. There is one passage in each of the orations of Demosthenes and Æschines, which refers to judges, and to those standing round as contradistinguished from the judges, clearly showing that these speeches were not delivered in the general assembly. In all these cases, too, the oaths are referred to under which the persons addressed were acting.

† Dem. *In Neæram*.

‡ Id. *In Timoc.*

this rule only applied to the proceedings of the assembly : for the senate could act by the bare majority of its numbers ; and the tribunals, such as the Areopagus and heliæa, could proceed to sentence against individuals by the majority at meetings composed of comparatively few voters.

5. Beside these restraints there were others much more feeble, because they were attempts, as it were, of the people to put themselves under disabilities, and had little more effect than to show how much some control was desiderated. Upon a new law being made, it was not unusual to add a perpetual prohibition of any repeal or alteration. The funds for the army had been by Pericles diverted to give the people the power of attending theatrical exhibitions, in which they so much delighted. Eubulus, a demagogue, at the very time when the expenses of the war most required this supply to be restored, had a law passed making it a capital offence so much as to propose it.—The exemptions from serving certain expensive offices had been carried to excess ; and Leptines proposed a law not only recalling some of those already granted, but prohibiting, under pain of confiscation and infamy, any one to propose new exemptions in future ; and it is to be remarked that, in the able and well-reasoned oration which Demosthenes wrote for one of the movers of the repeal (the time for prosecuting Leptines having elapsed), the absurdity of a law assuming to bind the legislature prospectively is not one of the grounds taken.* It is an observation of Mr. Hume, marked by his wonted sagacity, that such laws proved “the universal sense which the people had of their own levity and inconstancy.”†

6. There was a power vested in the presiding officer similar to that which we may remember to have found of such importance at Rome, of adjourning the meetings of the assembly upon any omen appearing to authorise it. The archons, too, appear to have possessed this privilege ; certainly the prytanes and proedri ; though it seems to have been much more rarely resorted to than at Rome.

7. The referring so many important questions to bodies different from the assembly must be deemed a check upon its rashness and violence, even if those bodies were constituted in the same way with itself, which neither the Areopagus nor the Heliæa were. The

* *Dem., 2nd Olynth., and In Lept.*

† *Essays, Part ii., 10.*

Heliæa came nearest to it in composition, being taken by lot, and without any permanent functions. But even if out of six or seven thousand persons five hundred are chosen by lot, the merely setting them apart, especially if they are to act under the sanction of an oath, is likely to make their conduct more cautious and deliberative. We know how differently a very small number acts from the body out of which it is taken, in the instance of juries. To a certain degree the same kind of difference will be found to affect the proceedings of a much less select body like the Heliastæ. The same observation applies to the senate. There can be little doubt that the prytanes, though chosen like the other 450, and their president, though also selected by lot, felt an individual responsibility which did not influence the senators at large.

8. The uncertainty in which we are left regarding the right of appeal, and the course taken for obtaining the judgment of different bodies on the same matter, prevents us from being able to trace distinctly the operation of probably the most effectual of all these checks. One thing is however clear: there was a tendency to have the proceedings of each judicature reviewed by some one or more other bodies, and an option given of going before one or other of courts of concurrent jurisdictions. In some instances it is believed that two decisions of the same body were necessary to give any sentence effect. It should indeed seem from the oration of Demosthenes against Timocrates, that hardly any resolution or judgment was final until it was executed, and that two successive determinations of the Senate and of the Assembly did not prevent the whole ground from being again gone over before the Heliastæ. If there lay no direct appeal from the Areopagus, there were few instances in which that body did not, either after or before pronouncing a final sentence, send the case to the Heliastæ. We have the remarkable instance of Demosthenes being either tried for bribery as to the whole matter, or at any rate as to the punishment to be inflicted, before the latter tribunal, after a unanimous sentence, or at least a resolution against him, of the Areopagus. The converse of this case was that of Antiphon, stated in the oration upon the Crown. He had been arrested for treason and sent to take his trial in the Heliæa, where by the arts of a party he was acquitted, and he left the city. The Areopagus had him seized again, and again put on his trial before the same courts,

though probably not composed of the same members, when he was put to the torture, convicted, and executed.* There can be no doubt that such a course of proceeding exposed parties to great hardships, an acquittal being no protection; but it is equally manifest that a security was derived from it against rash and inconsiderate determinations.

There was one kind of proceeding not peculiar to Athens, but more practised there than anywhere else, and which may be thought rather to operate in a contrary direction to those rules and principles now under consideration, giving a freer scope to the democratic power, rather than providing a restraint to it. It was an ancient custom, the origin of which is left in great uncertainty, that when any citizen had either from his wealth or his renown, and it might even be from the reputation justly acquired by his eminent services or his singular virtues, attained an extraordinary degree of weight and influence, he was liable to be removed for a length of time by banishment, in order to prevent his acquiring a power dangerous to the liberties of the people, and inconsistent with the democratic form of the government. This extraordinary proceeding was not of course regarded as a degradation; it was even affected to be treated not as a punishment; and it accordingly differed from ordinary or penal exile, because it was attended with no forfeiture, which always attended the other. In another respect it differed, that generally the place of banishment was assigned, although some have doubted this from the example of Themistocles, who, as a reward for such services as hardly any man had ever rendered to his country, was banished to Argos, and Thucydides nevertheless tells us that he went to all parts of the Peloponnesus.† It can hardly be supposed, however, that a person so unjustly treated as to be naturally bent on revenge should be suffered to go wherever he pleased; and we may therefore presume that the general rule was to assign the place of residence. The rules were very strict by which this proceeding was conducted. A day was appointed on which the people assembled in the public place or forum, where ten passages were prepared; by these all the tribes might go to the urns in which each person was to put his shell, or rather piece of earthenware in the shape of a shell, from whence the operation was termed *ostracism*. On this ware he was to write the name of the person

* Dem., *De Cor.*

† Thuc., lib. i., c. 135.

whom he desired to banish. The nine archons attended, with the prytanes on the part of the senate, and they first of all counted the people present; if there were fewer than 5000 there could be no sentence passed; and there are three wholly inconsistent accounts given of this quorum: one representing the presence only of the fixed number to be necessary; the second representing the number of 6000 votes to be required, but a majority of these to be sufficient; the third representing 6000 votes as necessary to sentence any person.* There is also an opinion adopted by men of great name on the authority of an ancient writer, that no person under sixty years of age could vote, but that there must be 6000 present of the legal age of twenty.† The time of banishment was ten years; but sometimes a decree of the assembly shortened this period. Some of the greatest and most virtuous men in Greece, Themistocles, Cimon, Aristides, suffered by ostracism for the influence which their merits had acquired; and it has been a general remark in all ages, that the excesses of popular violence never brought greater odium upon republican government than was cast upon it by this refinement of cruelty and injustice. The professed object was to give a security against the introduction of tyranny and the subversion of the popular constitution; but it would not be easy to imagine a worse result of any tyranny or of any change in the popular constitution than the enormity of ostracism itself. This detestable custom was in use both at Argos, Melitus, and Messina; and at Syracuse, where it was called *petalism*, from the names being written on leaves. In the three former places the Athenian term of ten years was adopted; in Syracuse it was only five; nor was it long tolerated there, even in this somewhat mitigated form.

It is manifest that all the circumstances which we have been considering depended for their influence, indeed for their exist-

* The account given by Plutarch (*Vit. Arist.*) seems, in one respect, very unintelligible. He says that different persons were proposed for ostracism, and that he whose name appeared on the greatest number of shells was banished. It is easy to see that when one party proposed to banish an adversary his friends would retaliate. But if the vote was taken as Plutarch describes, it would follow that one or other must be banished, and only one; whereas the majority might be of opinion that both should be banished, or neither; and in the event of more than two being denounced, the consequence would be still more absurd.

† Car. Sigon., *De Repub. Ath.*, ii., 4; and he quotes Plutarch's *Comment. Græc.* U. Emmius (*Fet. Græc.*) and A. Thysius (*Rep. Ath.*) adopt the same account. J. Meursius (*Att. Lect.* v., 18) gives all the other learning on the subject.

ence, upon the strong disposition of the community, and especially of the numerous and inferior class, to abide by ancient customs, and to make the deviating from them an exception of rare occurrence. This principle was mixed up with religious feelings; and it was carefully inculcated by almost every one who pretended to acquire any sway over the people. All reflecting men must have early perceived that unless some rules were held sacred and immovable in the guidance of their proceedings, an entire destruction of the state must speedily ensue; the catastrophe which should involve the whole in anarchy, accompanied in all likelihood with subjugation to a foreign power, would almost certainly be attended with the rebellion of their numerous slaves; and the massacre of the free native inhabitants by these enraged inmates, the resident foreigners heading them, must have been a risk seldom out of the Athenian's view when political contention came to an extremity. The contemplation of a hazard never remote from the commonwealth was sufficient to prevent a people so singularly quick, acute, and intelligent, from lightly neglecting established rules, on the enforcement of which their very existence seemed to depend. Nothing but such a phrenzy as seized the people of Paris once in two thousand years, and spread to infect the colonies, could have made the factious divisions that ruined St. Domingo possible in a settlement where, as in Attica, a few thousand free men were surrounded, and might at any instant be overwhelmed, by myriads of slaves. The modes of proceeding, then, to which we have been referring were generally speaking maintained by common consent and as a matter of course; and they must have had some tendency to moderate the power and regulate the caprice of the multitude. But after making all allowances, we must perceive that this power and caprice had quite scope enough to work the most extensive and the most remediless mischief.

The body of the people in whom so predominant a power was vested were for the most part in needy circumstances; they voted secretly; they were therefore exposed to corruption in all its forms, from the more refined influence of canvassing to the grosser substance of threats and bribes. Even supposing them to have acted without interested motives, their poverty, which was such that a large proportion received a small allowance daily from the public treasury or granary for their support, must have

greatly jarred with any patriotic principles if they had been sufficiently enlightened to feel their influence. But they were only half educated, and being wholly incapable of thinking for themselves, abandoned themselves to the guidance of demagogues, who drove the disreputable trade of gaining an influence over them by a life of artifice and intrigue. The statesmen of Athens were the most consummate artists in their calling of orators that the world ever saw, and they were among the most profligate and unprincipled men that ever obtained dominion over a nation.

The power possessed by the multitude to be exercised in crowded public assemblies, where nearly the whole business of the state,—executive, legislative, and judicial,—was carried on, made the profession of an orator the only important civil occupation, and they who pursued it united the calling of the hired advocate with that of the politician. Now the necessity of advocates in every community governed by a system of laws is quite manifest; the service which they render is exactly this, that without their aid justice could not be administered, men's rights could not be secured, and the simple and the feeble could not be protected from the cunning and the powerful. But it is most essential to morals that the advocate should be only the representative of other men in that openly avowed capacity, and that all he says and does should be said and done by him as standing in the stead of the party. The politician, whether sitting in a senate by personal right, or delegated by others to consult for their good, acts in a judicial capacity, acts in his own proper person, and upon his own judgment; he delivers his opinion because such are his convictions, and there cannot be a more corrupt or a more debasing employment of his faculties, or a more pernicious use of his position, than being alike prepared to support any side of any question. If all the members of both houses of the English parliament, or both the French chambers, who ever bear a part in their debates, were also advocates practising at the bar, the constitution of those assemblies would suffer considerable damage from the unavoidable effect of the professional habit upon the political character. The large admixture of other leading men prevents this from happening to any great degree. If not only there were no such admixture, the advocate and the senator being completely identified, but if also the professional and the political functions were entirely blended and confused, by the judicial busi-

ness being carried on in the same assemblies with the legislative, nay, in the greater number of cases the same question being both a cause, and a law or other state measure, it is easy to see how deep a wound must be inflicted upon public virtue—how wide a door opened to the contamination of statesmen's purity. The Athenian orator in some meetings of the *Heliæa* spoke as the hired advocate of a party who was on his trial, or was prosecuting an adversary; in others he wrote for lucre the party's speech which he was to deliver in his own person; and the greatest of all this celebrated body was known to have occasionally written the addresses of both sides. In other meetings of the same tribunal he was to advise the state, but standing in the same place, addressing the same audience, employing the same resources, using the same artifices. No versatility of powers, no steadiness of principle, could in such circumstances enable any man to draw the line between the two capacities; and while he gave himself wholly up to his client in the one, reserve himself wholly for his conscience and his country in the other. It was of inevitable necessity that he came soon to regard the conflict of the senate and forum as the same, and to be ready for any side of any question in both. Bad enough is it for the state, degrading enough for the individuals, that there should occasionally be men, or bodies of men, actuated by party views to the excess of regarding principles as indifferent, supporting whatever measures may tend to further such paltry interests, and opposing, it may be, the self-same measures because their adversaries have adopted them. But what only happens on rare occasions in France or in England, and is the pity or the scorn of all good men, according as they happen to be of a more humane temper, or a more severe, was the constant state of things at Athens, marshalling men on whichever side they found it for their interest to take, and making all principles be treated in very deed as the counters wherewith the game of faction was to be played.*

There can be no question that these men exercised the powers of government by leading the multitude; and as the military commands were bestowed by the assembly in the same way with the magistracies, the generals were drawn into the political contests, and became partisans of the orators, in some instances sharing in their corruption, though generally much freer from

* See Chap. V.

that taint than the gownsmen. These apparently were accessible to foreign influence, and even to corruption in its coarsest form. If all that is urged against Demosthenes respecting the embassy be put out of view, and his conduct before Philip be merely ascribed to embarrassment and timidity, there seems no ground for questioning the bribery that afterwards led to his conviction. That we have only the powerful speech of his accuser, and are without the reply which he may have made to it, and that a tradition remains of Harpalus sending an account to Alexander of the manner in which he had squandered the treasure embezzled from him, without any mention of Demosthenes as receiving a part, is surely nothing like an argument to be set against the unanimous opinion of such a body as the Areopagus, by whose judgment, moreover, the great orator had professed his readiness to abide. Nor can the same excuse be urged for him that has been set up for the party in England which has been charged with receiving foreign pecuniary aid to further its attacks upon arbitrary power, and the establishment of its own principles.* The Athenian partisan had deemed it for the interest of his country to reject the proposals of the Macedonian, whose peculations made him the enemy of the prince he had robbed, until the fruits of those peculations were employed to silence the most eloquent of human tongues; and it never has been suggested that the money, if received at all, was employed for any public purpose.† The mercenary nature of Demades was never disputed—it was hardly disguised by himself; and Antipater's saying has been recorded, that he had two

* There seems every reason to disbelieve the story, that the more distinguished leaders of the Whigs, especially Russell and Sidney, were parties to the assistance which some of them are believed to have had from Louis XIV. through his ambassador. Mr. Rose (*Observations on Fox's Historical Work*, sec. iv.) appears to acquit them of the charge, and he admits that the Tory leaders, with the King's connivance, received considerable sums, and even, like their master, pensions. Lord J. Russell, in his able and temperate *Life of his illustrious ancestor* (Chap. x.), has convicted the principal author of the charge, Sir J. Dalrymple, of a misstatement so gross as well to deserve the epithet of "dishonest," which he gives it; and Barillon's predecessor, Colbert, it is curious enough to observe, describes the commissioners whom he was employed somewhat earlier to bribe, and among whom was the profligate and despicable Buckingham, almost as Antipater had described Demades—persons, he says, whom he plainly saw nothing would satisfy.

† Plutarch (*Vit. Dem.*) relates other instances of Demosthenes's corruption. If we may believe his account, Alexander found letters of the orator's in Persia that proved his having received sums of money from that court. But no one can impeach his purity during the long struggle with Philip, his enmity to whom seems to have been the predominating passion of his mind.

supporters at Athens, Phocion who would receive nothing, and Demades whom nothing would satisfy. Others made an open profession of such profligacy, and this became even the language of society among the political classes. In fact those politicians, looking to the support of the multitude, could always reckon upon a good chance of escape from prosecution; and if they were not actually condemned, they had always a sufficient number of partisans to cover them from the effects of public opinion. The operation of party in removing the chief incitements to good conduct, and the most powerful restraints upon bad, has been already explained.* The Athenian factions and democracy worked in this manner more effectually than faction in our times; it was often easy for an individual, without party connexions, to obtain by rhetorical arts, especially when joined with corruption, indemnity for the worst conduct; and once secured by a vote, however narrowly carried in his favour, the clearest proof of infamy, in the eyes of all virtuous and reflecting persons, was of no avail in effecting his downfall. That the fickleness of the people afforded chances of escape we have numerous proofs. The instance of Antiphon's first acquittal has already been mentioned. The acquittal of Ctesiphon was perhaps justified in all the circumstances of the case, though it must be observed that the preponderance of the legal argument was against him, and that an award of the honour in question to Demosthenes, avowedly given as an irregularity, though to be excused by his services, was all that in strictness should have been decreed. But the numerous court suffered itself to be carried away by his eloquence, and, not content with honouring him, ruined his adversary, driving him into banishment by the failure of his prosecution. How little it was possible to reckon upon the course which the people would take in any given case appeared the more clearly from this, that they were then for the most part attached to the Macedonian party, and hostile to the great orator, whose own fate was not long afterwards sealed by the same fickleness of the same people, recalling him from a just banishment to serve their own purposes, and immediately afterwards abandoning him to the fury of his enemy and their own, at a moment when he was wholly occupied with providing for their defence.

The turbulence of the Assembly, and even of the less numerous

* See Chap. V.

tribunal, the *Heliaea*, was as remarkable as the intrigues and profligacy of the leading men. On many occasions there was an uproar excited by the predominant party, for the purpose of preventing an adversary from being heard, and this so successfully, that it is exceedingly uncertain that some of the noblest remains of Attic eloquence were ever delivered.* Such scandalous scenes were not confined to meetings held upon political questions; those of a judicial kind were sometimes, though not so frequently, discussed under the same sinister influence; and instances were not wanting of the most eminent men, charged with the greatest offences, and desirous to defend themselves, yet prevented by clamour from obtaining a hearing. This happened to Demosthenes himself in one stage of the accusation brought against him for corruption, and it was therefore that he afterwards obtained a decree referring the case to the *Areopagus*. So sensible were the Athenians of this vice in their constitution, that an arrangement was made for the tribes taking upon themselves in rotation to guard the public meetings, and endeavour to maintain some order in their proceedings. The same causes, however, in which the evil originated affected also the remedy, and too often frustrated its operation, namely, the fickle, inconstant, volatile temper of the people, and the great number of persons appointed to keep down tumult. These preservers of order were themselves led away by the predominant feelings, yielded to the excitement, and joined in the violence which they were stationed to control.

That the Athenians had not formed those sober and calm habits of both thinking and acting upon state affairs which alone can fit men for bearing a useful part in the government, and which may be wholly wanting even to a people of great acuteness, and very well acquainted with the particulars of each separate question brought before them (Part I., Chap. III.), seems quite indisputable. It is also extremely probable that the same bad constitution might have worked far better with another nation, or with the same in a more advanced stage of improvement. But its vices were deeply rooted, and of a mischievous influence, which could in no circumstances have been fully counteracted. The want of the representative principle—the consequently too large numbers which attended the meetings of the most powerful body in the state—the exercise of administrative powers by such a

* This controversy exists even as to the orations upon the Embassy.

number—the formation of the less numerous bodies by lot—and the confusion of judicial as well as legislative functions with executive—were defects of a nature so radical and pernicious as no improvement in the character and habits could ever be expected to countervail. The entirely promiscuous nature of the assembly, and the extension of the same vicious composition to the Senate and the *Heliaæa* by the lot, exceedingly limited, though it did not wholly destroy, the influence of the Natural Aristocracy. This would of itself have been a fatal defect ; but even had these assemblies been composed entirely of the classes most fit to govern, and had their numbers been in consequence greatly diminished, the confusion of functions, and the consequent imperfection of the judicial system, would have still made the constitution inadequate to provide for its own stability, and to perform the most important of the services for the purpose of securing which all governments are established.

It is, on the other hand, no less certain that the Athenian constitution was calculated to bestow those important benefits which flow from all popular systems, however ill contrived, and that at different periods it in fact did bestow those benefits. The universal competition of talents, the emulation in virtue, the personal interest in the public welfare, the zeal for promoting it often at the expense of individual sacrifices, and very generally at the risk of individual suffering, not only led to the possession of extraordinary accomplishments, and the performance of brilliant exploits, but placed the whole powers of the community at the disposal of its government, and, when sound counsels were followed, produced results out of all proportion to the natural resources of the country. The very defects themselves of the system had this tendency ; the part which each person was enabled, and even called upon to take in the administration, and the risk to which failure in any civil measure or any military enterprise exposed all statesmen and captains, must often have produced exertions little likely to be made under a more regular and a more just dispensation. These results were dearly purchased by their concomitant mischiefs, and they were never to be relied upon in a scheme of polity such as we have been contemplating. The extraordinary efforts which were successfully made to resist foreign aggression, in circumstances which, after every allowance is made for the gross exaggerations of historians, re-

ording, as usual, the traditions of national vanity, must be considered as all but desperate, and the great power which, after these exertions, Athens obtained for a considerable period of time, are probably without a parallel in the history of any other nation. No one, however, can examine the annals of those times without perceiving how precarious the advantages were that thus accrued from the system, and with how many serious mischiefs they were accompanied.

CHAPTER XVIII.

GOVERNMENTS OF GREECE—ATHENS (*concluded*)—
OTHER STATES.

Parties at Athens—Dalesmen, Mountaineers, Coastmen, and Trimmers—Usurpation of the Pisistratidæ—Their downfall—Pisistratus—Clisthenes—Miltiades—Popular ingratitude—Fables on Marathon—Democratic reform—Aristides—Barbarous popular excesses—Themistocles—His maltreatment—Athenian greatness—Pericles—Alcibiades—Thirty Tyrants—Faction—Rebellion—Socrates—Other States—Bœotia—Ætolia—Corcyra—Achæa—Foreign appeals.

THE opposite parties of the patricians and the plebeians, the landowners in the plains (or dalesmen) and the mountaineers, between which Solon had steered his course with so much address, continued, in his time and after him, to distract the nation. But the party of the coast had grown up to importance, and (as the phrase used to be in England a hundred and eighty years ago) trimmed between the other two. The Alcæonidæ, the most powerful family, descended from the kings and perpetual archons, and always desirous of regaining their family's mastery over the state which was termed tyranny or the supreme government of an individual, set themselves at the head of this third party; but notwithstanding their great influence, they exposed themselves to a degree of public odium from which they never could entirely recover, by violating a sanctuary in order to destroy the rival party, that of Cylon, the leaders of which had taken refuge there when his attempt failed to usurp the chief power. While the contest lay between the trimmers, headed by the Alcæonidæ, and the dalesmen, headed by the patrician Lyeurgus, Pisistratus, the chief of another great family, paid his court to the mountaineers, and seized by their help upon the chief power. The other two parties coalesced against him, and drove him out of the country; their leaders quarrelled, and he was enabled to return, but was again expelled; new dissensions enabled him, after thirteen years' exile,

again to return, and by the aid of a force which he brought with him, and of his adherents in the popular or mountain party, to repossess himself of the government, which he retained till his death, and left to his sons. All the institutions of Solon were preserved during the fifty years of this tyranny; the family governed strictly according to his laws; they conferred many benefits on the community, and made many improvements; they were always favoured by the people, to whom they paid unceasing court; but an act of violence and injustice which was connected with unchaste passions both in them and in those they endeavoured to oppress, and which was calculated, like the excesses of Tarquin at Rome, to excite public indignation, was taken advantage of by the patrician and coast factions to ruin their credit. One of them was killed by the injured individuals; and the others having become the objects of public indignation, the Alcmeonidæ family now saw an opportunity of attaining the great object of their ambition, the tyranny, by taking the line which Pisistratus had pursued. They left the trimmers, or such of them as they could not persuade to join them in heading the mountaineers, and Clisthenes, their chief, obtained the power which Pisistratus had held by the same means, by paying court to the popular party, and by also availing himself of assistance from Sparta. But he gave the people an influence which the Pisistratidæ had withheld; he made those additions, of which we have already spoken, to the tribes and senate, and to the officers chosen by the people. The patricians, under Isagoras, struggled against him, and finding they had no chance of success, they in their turn also called in the assistance of Sparta, and the party of Clisthenes appealed to Persia for help, which was refused, unless upon terms that the Athenians would not submit to. The Spartans, joined by the Boeotians and others, were at first successful; and Clisthenes with seven hundred families of his party were driven out of the country. A quarrel between the two Spartan kings, on the eve of a great battle, occasioned their forces to be withdrawn, and the Athenians defeating their allies, Clisthenes and his party were recalled. The accident of his adversaries, the aristocratic party, under Isagoras, having been assisted by Sparta, not only confirmed the attachment of the Alcmeonidæ to popular principles, but to the cause of Athenian independence. Sparta being the leader of the aristocratic, oligarchical, or Dorian faction in Greece, Athens was at the head of

the Ionian or democratic; and the decidedly democratic turn which the Athenian government took began with Clisthenes though it was only completed by the Persian war.

This celebrated struggle was mainly occasioned by the family and faction of the Pisistratidæ, who had taken refuge in the court of Darius, and by their intrigues led him to undertake the conquest of Greece. The Athenians, deserted by the other states, met his invading army, in which the exiled chief of that faction, Hippias, had a forward appointment. Three generals, with the right of commanding in rotation, headed the Athenian army; and when two of them, Aristides and Themistocles, desired to give up their turn that Miltiades, the more experienced leader, might conduct the fight, he knew the nature of the people he served too well to accept it, being quite aware that any mischance must prove his ruin, had he commanded out of his turn. He waited till his day came, and gained the immortal victory of Marathon, certainly one of the greatest achievements in the history of war, although the accounts preserved by Greek writers, our only authorities, give it almost a fabulous aspect.* For a little while the illustrious captain, who had performed this prodigious service, was the idol of his countrymen. But an expedition which he had been allowed to undertake on representing the great treasure that would accrue from it, proved unsuccessful; he was tried upon a charge of misconduct whilst commanding in Thrace at a former period of his life; like Sir Walter Raleigh, he was sentenced because the avarice of his tyrants had been disappointed; and, like that great man, he was punished upon an obsolete charge by the ingratitude, not indeed of the prince, but of the people whom he had faithfully and brilliantly served.

The war was renewed after Darius's death by his son, with a force altogether overwhelming. Athens was now joined by Sparta,

* We are desired to believe that 120,000 Persian troops, brought over in 600 vessels, were entirely defeated by 11,000 Greeks, with a loss of between 6,000 and 7,000 men, the conquerors only losing 182. Nor is any explanation given of the means by which the remainder of the beaten army, still sufficient to overwhelm the Athenians, were prevented from executing their plan of doubling Cape Sunium, and marching to Athens immediately after the battle. The other Greek states had held back from the contest, being well disposed to yield the merely nominal submission which would have satisfied Darius. That the Athenians refused to yield this submission is perhaps less a proof of their constancy than their sagacity; for they well knew that as the whole quarrel was with them, no terms they could submit to were likely to save them from the king's tyranny.

while Thebes and other states took part with the invader. After an almost miraculous display of valour and self-devotion at Thermopylæ, and the greatest naval victory of ancient times at Salamis, the force of numbers prevailed, and Athens was twice taken and sacked within a few months. It was at this crisis that Aristides conceived the design of completing the reforms of Clisthenes. Though a decided supporter of the patrician party, he had early perceived the powerful effect of those reforms in calling forth the exertions of the people, and he introduced the great change in the constitution by which all offices were thrown open to every class of the people. There might be the greatest objections to this measure, though it seemed difficult to stop short in reform at the point where Clisthenes had left it; but all must confess that Aristides deserved the greatest commendation both for overcoming his early prejudices, and for rising superior to the paltry fear of being deemed inconsistent. The spirit of the nation was now raised to the highest pitch of excitement, and while it enabled the chiefs to perform the greatest exploits, it also burst forth into the most barbarous excesses both of cruelty and injustice. Splendid victories were gained against great superiority of force, and after that of Plataea above 200,000 of their enemies were massacred when incapable of resisting. The most strenuous opposition was by the spirit of the people made to the invading army, while the odds seemed wholly against them; and they stoned to death at different times two of their orators (Cyrillus and Lycidus) for merely proposing to negotiate in desperate circumstances, their women in one of these instances acting the part of furies and murdering the wife of the offender.*

The naval power of Athens was founded, and the city rebuilt and fortified, by the wise and vigorous counsels of Themistocles; and he was soon after banished from the country he had so often saved. This petty state not only rose to the head of all the Greeks, and gave the law to them for above fifty years, but extended its dominion over the islands, obtained possession of the coast which forms the key of the Euxine, and at one time held a large part of Egypt. This too was the period when the fine arts made the greatest progress, when those works were produced

* Demosthenes reminds the Athenians of this brutal passage in their history as one of peculiar glory, and as well calculated to rouse up a spirit equally honourable. (*De Corona.*)

which are still the admiration of the world even in the fragments that time has spared to us, and when the foundations were prepared for those more precious works of a higher art which happily bids defiance to its ravages. Though Pericles, under whose auspices these great things were done, went far in corrupting the people to retain his power, yet he kept himself wholly independent, consulting their interests and his own glory as bound up with theirs, but rather dictating to them than suffering them to prescribe his course; whereas, says the historian, those who followed him shaped the public measures for their own aggrandisement and profit, accommodating themselves and giving up the management of affairs to the mere pleasure of the people.*

The Peloponnesian war exhibited constant proofs of the inevitable consequence of the new leadership, and the radical vices of the constitution. But it may suffice to mention the Sicilian expedition, and the conduct of Alcibiades. His personal influence, and that of his faction, induced the people to undertake the conquest of Sicily, for which their resources were utterly inadequate, and against the soundest advice of their most experienced generals. On the eve of his departure he was impeached for sacrilege, but allowed to sail, his trial being postponed. On the eve of a battle he was recalled, but escaped and joined the Spartans, the chiefs of the league against his country, while the two Athenian armies in Sicily were destroyed. After reducing Athens to the greatest straits and peril at the head of her enemies, he intrigued with the Persian king—regained his influence at home—established an oligarchy of four hundred—was suffered to return—became more popular than ever—removed the new constitution and substituted another—was actually offered the supreme power in the state—suddenly lost the favour he had acquired, by the giddy people laying on him the blame which another officer had alone incurred, refusing to hear his defence, and driving him into exile.

After many years of various fortune Sparta succeeded in overcoming her great rival, overthrowing the popular government, and planting an oligarchy, commonly called the Thirty Tyrants,

* Thucyd., ii., 65. The expression is remarkable, and stronger than in the text—*Ερεπασσεντο καὶ ἡδονας ἐν δίκῃ καὶ ἐν στρατοῖσι, &c.* *Ερεπασσεντο* is "turned round," "jumped about," as men do in treading grapes. He had said just before, that though, in the time of Pericles, the government was nominally democratic, yet in reality it was in the hands of the first men in the state.

in its place. A system of terror, maintained by numerous assassinations, had led to the establishment of the Four Hundred, and contributed to maintain their power. Other murders under the colour of judicial proceedings attended their overthrow. Their tyranny, and the outrages both committed by them and against their adherents, were far exceeded by the Thirty, who in the short period of eight months put upwards of 1500 citizens to death, and indulging in every excess of arbitrary power, sacrificed not only all who were likely to shake their dominion, but all whose wealth offered any temptation, or whose death could gratify any personal animosity.* Their overthrow restored the democratic constitution, and the government by factions and their chiefs, among whom there was constantly scope for the interference of Sparta, now predominant by land in Greece, as Athens still continued to be by sea. The same system of tumult and intrigue, but rendered more pernicious than ever by the destruction which the thirty tyrants had effected of almost all the eminent men in the state, continued during the rise of the Macedonian power, and prepared the way for that final ascendancy which destroyed the independence of Athens, and secured her comparative tranquillity, without any remains of her ancient glory, until with the rest of Greece she became part of a Roman province.

In the whole history of Greek faction and democracy there is nothing more remarkable than this, that in the very communities which of all that ever existed were the most inflamed with national feeling of patriotic spirit and mutual hatred, one of the most ordinary occurrences should have been the appeals of contending parties to the enemies of their country for help in carrying on their factions contests; and that the worst kind of treason—joining the public enemy, and both counselling and assisting his operations—should have formed almost a regular part of the political conduct pursued by the leaders of every faction which happened to be defeated. A French, or English, or American faction does not form a coalition with other parties once adverse to his own, nay, hardly appeals to the country at an election against the faction that has removed him from office with less

* They governed by a larger council of 3000 well-armed men, selected from among the wealthier classes, and by whose aid they disarmed the rest of the community. The scenes which took place in this assembly, and the destruction by its means of their adversaries, and sometimes, as in the case of Theramenes, of members of their own body, strongly remind the reader of the reign of terror in Paris.

reluctance or fewer scruples than an Athenian patriot, upon being ill-treated by the people, showed in betaking himself to the Spartan camp or the court of the Persian despot. Nor does the reputation of the man who so acted appear to have suffered any indelible stain, any more than his return to popular favour was prevented by their openly avowed treasons.

The low standard of patriotism and political feeling, the want of a genuine public spirit, and the frightful vehemence of faction, is not the only matter which such facts as these illustrate. The odious tyranny of the multitude must have reached a height, and become a grievance altogether intolerable, giving to the country itself the aspect of a capricious and cruel despot, clothing it in attitudes at once frightful and hateful, and stripping it of all that should naturally win affection or respect. We may well believe how unbearable a tyranny it must have been that could induce a man of such perfect virtue as Socrates to espouse the party of those who, under the dictation of the victorious enemy, overthrew it to set up in its stead the oligarchy which proved beyond measure more insupportable still; nay, could even make him adhere to that oligarchy when its hands were stained with the blood of the most eminent persons in the state. To his political connexion with these men, and his having been the teacher of Critias and Theramenes, their leaders, and the worst among them, his own condemnation, under the most false prettexts, was undoubtedly owing; and this judicial murder adds one, and not the least disgraceful, to the catalogue of crimes for which the constitution and the people of Athens are answerable.*

* Socrates had nobly distinguished himself in resisting the determination of the people to condemn the generals who had gained the battle of Arginusæ. The clamour of faction against these great public benefactors succeeded in obtaining sentence of death upon them immediately after their victory, and Socrates exposed himself to the fury of the mob by refusing, as presiding officer in the assembly (*proedrus*), to let the question be put. The judicial murder was nevertheless perpetrated immediately after. He exposed himself to the resentment of the Thirty in like manner, by refusing to join in executing an order of theirs to put a wealthy man to death in their proscription. He, however, had been named as one of those deputed to do the work, and he remained at Athens unmolested, and even adhering to them during their reign. He and Xenophon had the utmost aversion to the democratic constitution and party, and the prosecution against him was instigated by the leaders of Thrasybulus's party, which had overturned the tyrants. A solemn oath having been taken by the people to maintain

It would be impossible, from the extraordinary and conflicting notices left of them, to examine minutely the constitutions of the other Greek states, even if there were any good purpose to be served by the inquiry, after having entered so much at large as we have done into the subject of the two leading commonwealths. Most of the others appear to have borne a general resemblance to Athens, both in the form of their government and in their history; some, however, having a more aristocratic or oligarchical system. But the defects of the great democracy seem to have been still more strikingly exhibited in some of these less considerable systems of polity than in the Athenian, while in all of them that intolerable and factious violence, which prevailed in Athens and Sparta, were carried to a greater pitch.

The Theban, or rather Bœotian, government was in the hands of a council from all the eleven towns, or petty states of the union, and of eleven chiefs called *Bœotarchy*, who, as well as the two polemarchs at the head of domestic concerns, were chosen for a year; and such was the jealousy of those chiefs acquiring independent power, that it was an offence punishable with death to refuse quitting their office within one month after it expired. No person could fill any high office until he had ceased for ten years to carry on any retail trade.

Other instances of jealousy towards the magistrates are to be found in different commonwealths. Thus the Ætolians, a federal union like the Bœotians, had a chief annually chosen, and whose duty it was to convoke the general council, called *Panætolon*. He was to lay before it the cause of its assembling, but was prohibited from making any speech whatever upon the subject. To him, however, was intrusted the execution of the decrees and laws made by the assembly. This imposing silence upon the executive is the converse of the scheme in earlier times adopted in Crete, and at Sparta, of allowing the assembly only to determine on the matters propounded without any discussion.

Coreyra seems, of all these ancient states, to have been the most renowned for violence and sedition, insomuch that "Corcyrian sedition" came to be a proverbial expression. One of these violent anarchies is recorded in which, besides butchering or

animosity grounded upon that charge, and the restoration of the old democracy, it was impossible to try Socrates for the real offence which he had given, and the superstitious ground was found as effectual.

banishing the sixty senators, each town, and even each house, was divided against itself; brothers, nay, even parents and children, shedding each other's blood.

In all these commonwealths the great bulk of the people were slaves; and in the Achæan state it happened that the grown-up men having been greatly reduced in numbers by the Spartan invasion, the slaves rose, took the whole management of the government into their own hands, and had entire possession of the country for some years. How they were overpowered we are not distinctly informed, but they were either extirpated or banished in a body.

Each of the states, and indeed each town of every state, was divided into two factions, arranged against each other with that implacable and unscrupulous fury which is only known in petty states, subject to the curse of unbalanced popular government. These two parties, the democratic and aristocratic or oligarchical, were always in openly avowed correspondence with the two great leaders of the party, Athens and Sparta; so that besides the mischiefs of civil broils, of themselves sufficiently intolerable, they were exposed to the yet more unbearable evils arising out of foreign influence. The worst of all wars is, no doubt, a civil war; but a civil war, in part waged by foreign co-operation, is a worse form of civil war.

CHAPTER XIX.

ITALIAN GOVERNMENTS—MUNICIPAL CONSTITUTIONS AND
ARISTOCRACY.

Feudal plan monarchical—Rise of Aristocracy—Civic Nobility—Otho I.—General form of Government—Consuls—Credenza—Senate—Parliament—Wars of the Cities—Pavia and Milan—War of the Towns—Treaty of Constance.

THE feudal system, of which we formerly traced the establishment in Italy, especially in its northern and middle divisions (Part I., Chap. XVIII.), created a state of society out of which aristocratic government arose as its natural growth. We have seen the rise of such institutions in Rome and Sparta from the separation of the class which had effected the conquest of the country, and retained for itself and its descendants the exclusive possession of political power, treating the original inhabitants, and all foreigners who settled among them, as an inferior order of persons. The northern nations who overran Italy, beside their superiority as conquerors, introduced a new distinction, not at first so powerful in maintaining the difference of ranks, but much more desirable—that of territorial possession. The land became the property of the conquerors; and such portions of it as were left to the original inhabitants could only be possessed by them on paying a portion of its produce. The portion of land which was entirely taken from them, was again subdivided among the conquerors, so as to create distinctions in their ranks; but all of them—all the free and military settlers and their descendants, whether holding whole provinces under the prince, or only holding smaller portions under those great proprietors—formed an order distinguished from the rest of the community, who were either in a state of bondage or of vassalage to them if they were allowed to possess or to cultivate the land; and, if unconnected with the land, were, whether free or bondsmen, reckoned of no account in the state until their industry as artisans and traders had given

them wealth and importance. There was thus a privileged class or aristocracy in all those feudal states; but the government was monarchical; it was a gradation of monarchical divisions; and the lord or baron was the monarchical chief of his vassals; the great feudatories, the duke or count, or on the frontiers the marquis, was the chief of the barons; and the king or prince was the chief of the great feudatories. Whatever division there was of power and of influence consisted in the sharing of it between the prince and those great feudatories, or between the great feudatories and their barons. Between the barons and their vassals there was no such partition, any more than between the vassals and those sub-feudatories who held of them, or between any of those classes of landowners and the serfs who cultivated the ground.

It is, for our present purpose, immaterial in what way we decide the questions which have been raised on this subject: whether the whole army obtaining grants of land, the whole of the original conquerors in any district, became the privileged, the noble class, or only the superior portions of them, the companions of the chief or prince; and whether in subsequent times the privileges and rank of nobles were confined to those landowners who held immediately under the prince, or were extended to those also who held under the great feudatories. It is most probable that in some places where the number of the invaders was small, or soon became small, as a separate class they might form, like the ancient Roman and Spartan patricians, the privileged class; while in other provinces this distinction was confined to a limited number in a large body of settlers. It is also likely that the immediate holders under the prince enjoyed distinctions over the other landowners; and when the great feudatories became themselves rather princes federally connected with the common chief, king, or emperor, than subjects of his crown, their barons formed a noble class as holding under princes rather than under subjects. But in what way soever we consider these questions, the establishment of distinct classes or orders of men in each community is clear; in each community there was a body different from the bulk of the people, and possessing privileges which the people did not enjoy. This body originally consisted of considerable landowners—at all times it possessed the great bulk of the landed property, either directly or by rights which it held over the immediate cultivators. But as its privileges were hereditary, and

descended to all the posterity of the first proprietors, in process of time the body consisted of many persons possessing very little landed property, and of many possessing none at all, as well as of great proprietors. The importance of the class depended upon the territorial rights of its more considerable members. The more numerous and poorer members had privileges which distinguished them from the rest of the community; but they were, like the mere vassals, rather followers of the chiefs than partakers of their power. There was thus an aristocracy within an aristocracy; the whole body of the nobles was distinguished from the rest of the people; but the real aristocracy consisted of the wealthy nobles, according to the distribution of the Natural Aristocracy.

We have already (Part I., Chap. XIII.) traced the origin of the great titles both in France and Italy, originally personal offices conferred by the sovereign upon the more powerful nobles, as governors of districts or towns; afterwards, through the negligence or weakness of the prince, made hereditary in their families. In the Lombard kingdom, but still more universally under the Carolingian, all the considerable towns of Italy were under governors—at first under dukes, who held a large district; but afterwards under counts, who represented the sovereign in the several towns. In each town the count (who was sometimes the bishop also, and always commanded the forces as well as presided in the tribunals) had a kind of court or council in administering justice; it was composed of burghers, chosen by the count, and approved by the rest of the inhabitants, and called *sculdasci*, as we have seen (Part I., Chap. XVII.), answering to the *scabini* or *Eschevins* of the Franks. The count, accompanied by these magistrates, attended the sovereign's court or general assembly, at which his decrees were published, and received the kind of sanction, little more than a formality, required to give them the force of laws. The villages were the property of the barons, and inhabited by their vassals, who cultivated the land under them, paying a certain proportion of the produce, and rendering certain services, as well as attending the subordinate courts, in which the barons, with their assistance, administered justice, and following them in war as their militia.

The burghers by degrees acquired some importance, and became in many instances a counterpoise on behalf of the people to

the count's authority. But in the country the barons met with no opposition, and found no one of any importance in wealth or of any influence to match with their own. There subsisted a constant jealousy between the towns and the barons. The burghers considered that the country districts which lay under the dominion of the barons naturally belonged to the town, which depended upon them for its supplies; and the barons, who disliked any rivalry of the burghers, were better pleased to remain constantly among their own vassals in the country, avoiding all intercourse with the towns. Meanwhile the power both of the towns and the barons was increasing, though in very different degrees, the towns making a much more rapid progress towards independence. The first step made, however, was common to both. The northern nations, from jealousy of the conquered people, had made it a settled rule of their policy to destroy all fortifications, to keep every town open, and to prevent all country residences from being surrounded with walls or other outworks. This policy was maintained during the subsistence of the Lombard kingdom, from the latter part of the sixth to the latter part of the eighth century. But during the Carlovingian monarchy, and the unsettled times which succeeded it, the sovereign found it necessary to pursue a different course in order to protect the country against the new swarms of barbarians, especially the Huns, who were continually making inroads into Italy; and in the ninth and tenth centuries charters of fortification were granted by the sovereign, who alone was considered as intrusted with the public defence, to all towns of any consequence, and even to most villages, monasteries, and baronial residences; so that these all became places of strength, afforded shelter to the neighbourhood, were places of refuge to the people whom the barons or their followers oppressed, and also enabled those baronial followers to escape, whom the quarrels of the barons placed in frequent jeopardy. A considerable increase in the population, in the wealth and generally in the importance of the towns, especially of the larger ones, was the consequence. But this additional importance of their inhabitants was attended with the almost entire separation of the nobles, who now confined themselves to their castles, and the domains cultivated by their vassals and their enfranchised serfs attached to the soil, and neither liable to be removed by the owner nor free to quit it of themselves.

The government of the towns, too, the municipal police, and administration of justice, was exceedingly imperfect, until the foundation of the Saxon kingdom of Italy by Otho I., commonly and justly called the Great, under whose reign a very important change was made in the condition of the Italian towns. It is not often that men have happened to bestow this appellation on those whose warlike exploits were their least remarkable distinction, and whose conquests over barbarism and anarchy long survived the influence and even the memory of their military exploits. This eminent person finally overthrew, in 965, after a contest of four years, the kingdom of Italy, which had been a prey to various princes during the anarchy of half a century after the Carlovingian dynasty ended in Charles le Gros. The feudal army by which this conquest was effected could only have been kept together so as to retain the country in subjection by seizing the greater part of the land and dividing it among the commanders and their followers. Notwithstanding the hatred in which he was naturally held by the Lombard barons, Otho was too just and too wise to adopt such a policy. He ran the risk of his conquests being rendered insecure by the return of his German troops to their own country, when the respective periods of their service expired, and he left the Italian barons in possession of their lands and their castles, however ill-disposed towards him he knew them to be. Instead of establishing an authority which must always have been shaken by his absence from the scene of his victories, consequently rendering each visit to his hereditary dominions dangerous to his new acquisitions, he judiciously laid the foundation of an admirable influence by giving the towns such privileges as should secure their good government, and at the same time render them his steady allies against the discontented barons, by establishing their independence, and making them owe it to his favour. He took the precaution, indeed, of bestowing upon his own brother, Henry of Bavaria, the duchy of Carinthia and the marquisate of Verona and Frioul, because this secured the entrance into Italy. He created three other great fiefs—Este, Modena, and Monferrat—into marquisates for his adherents. But the other fiefs he left untouched: in these the power of the great feudatories was greater over their barons and vassals than was that of the new feudatories whom he had created, and who could make no resistance to the attacks upon their authority, except by entirely quitting the towns

and strengthening themselves in their castles. But in all the fiefs the baronial power, as opposed to the towns, became exceedingly weakened, in consequence of the municipal institutions which Otho allowed the burghers to obtain.

Hitherto the count intrusted with the government of each town had been assisted by a council of *sculdasci* chosen from the body of the burghers. There was now a general desire of returning to the ancient Roman plan of municipal government. Otho, ever inclined to gratify the wishes of the citizens, allowed each town to appoint two consuls, annually chosen by the people; and these were charged with the administration of justice, and with the command of the town's militia. It was also the office of the consuls to convoke and to preside over the councils, which were two in number: one called the *credenza*, or secret council, an executive body, small in number, and charged with the financial concerns of the community as well as its foreign relations, assisting and also controlling the consuls; the other, a more numerous body, and forming a senate—the name by which it went in many towns, though in some it was called the greater, in others the special council, its principal office being to prepare the legislative and administrative measures which were to be laid before the general assembly of the people. In that assembly, or *parliament*, as it was generally termed, the supreme power might be said to reside; but it was only convoked upon important occasions, and in almost all the towns its deliberations were confined to those matters which had received the previous sanction of the two councils, the senate and the *credenza*. These councils were chosen by the different districts or wards into which the town was divided, and each of which also furnished one or more troops of horse and companies of heavy infantry: the former troops chosen by the wealthier burghers, the latter from those next in degree, while the rest of the inhabitants joined the military levy lightly armed—every person between eighteen and seventy being obliged to serve. The service of the state was not the only one in which these forces were employed. The towns asserted their independence against the barons of the adjoining territory, and against the great feudatories themselves, and Otho and his successors encouraged this struggle.

Nor could they prevent another incident of the feudal system—the general right of private war—from extending itself to the

towns, which, accordingly, carried on frequent hostilities with one another. The chief contest lay between the two most powerful towns, Pavia and Milan, and their hostility was bitter and of long duration. When the Saxon family was extinct in 1002, on the death of Otho's grandson, those two towns took opposite parts in the war of the disputed succession; and both they and all the other towns established their municipal privileges more securely during that contest. The separation of the burghers and the nobility had now become everywhere complete; and the progress which the former had made in wealth and importance from the gradual increase of their commerce during the eleventh century excited the jealousy of the barons, who, except when they attended the occasional general assemblies or diets, held by the emperors on their visits to Italy, found their importance reduced within a narrow compass, and had not the benefits of the police which the towns maintained, but were obliged to provide for their own security by the force which they severally supported. This jealousy broke out in the reign of Conrad II. (the Salic) between the barons and the city of Milan, then under the government of Archbishop Heribert; and after hostilities in which other towns took part, the emperor brought about a general pacification by the new and very important ordinances which he promulgated in the diet held at Roncaglia in 1026, establishing the hereditary right to fiefs, unless on the forfeiture of the vassal for felony, and declaring all serfs personally free, though annexed to the soil. Soon after Conrad's decease in 1039, the practice became general for the inferior nobility, especially the less wealthy landowners, to enrol themselves as hurgesses in the neighbouring towns, and thus acquire the protection of the hurgheer forces, as well as a voice in the administration of the civic affairs. The townspeople were inclined to pay them court, and to obtain the fellowship also of the more powerful barons, by giving them a share in the municipal offices, both because of their capacity to form the cavalry of their hurgheer militia, and because of the power which the command of the castles enabled them to exert over the traffic of each town. Out of this state of things arose the governments of the towns in the north and middle of Italy.

We have in the former part of this work (Part I., Chap. VIII.) described the long war carried on by the See of Rome with the Franconian emperors upon the dispute of the investitures. For

sixty years the towns were divided by this controversy, taking part, some with the emperors, some with the see; but the effect of these operations, both the civil intrigues and the military movements, was greatly to increase the influence of the townspeople, and to make their subjugation by the emperor more difficult when he was afterwards disposed to take part with the barons, and revoke the municipal privileges granted by the Saxon princes. The war of the investitures was closed in 1122 by the peace of Worms. Thirty years after this treaty, Frederick Barbarossa, being related by blood both to the Guelph and Ghibelline families, as our Henry VII. was to the House of Lancaster by blood and the House of York by marriage, was enabled to extinguish during his long reign the feud, which afterwards broke out more fiercely than ever upon his election as emperor, and his assumption of the Italian kingdom. He was encouraged by the advantages of his position, at the head of both the parties, to attempt subduing the Italian cities. The people of Lodi having appealed to him for aid against the Milanese, who had for forty years kept them in cruel subjection, he took their part, and repairing to Roncaglia, where he held the diet, as was customary, he there received the complaints of other towns against their oppressors. He was soon at the head of a formidable league, the principal member being Pavia, and he was immediately involved in hostilities against Milan and the towns which sided with her. This war continued for thirty years to lay waste the Italian territories and towns; but it called forth displays of patriotism and of courage which rendered their conquest impossible, even if Frederick's German resources had been far more available than those of any feudal monarchy ever could be. We have already seen (Part I., Chap. XIX.) that he was compelled to acknowledge the entire independence of the towns and their municipal government by the treaty of Constance, which terminated this long conflict.

The acknowledgment of independence by the peace of Constance was an event of great importance to the Italian cities, and may be regarded as the foundation of their governments. Although before this war they had, ever since the time of Otho I., asserted their freedom, and, during the Saxon dynasty, had in fact enjoyed it, they were always regarded as by law subject to the empire, and they never openly claimed to be independent of it. They

swore fealty ; they paid tribute ; and five years after the war had commenced, and notwithstanding that Frederick had concluded a treaty with the Milanese, recognising their right to elect consuls, and engaging that his troops should not enter their town, his military operations having failed, or only proved successful by the plague and famine that aided him, yet a diet held at Roncaglia, with the full consent of the laity, though influenced by the slavish counsels of the clergy and the lawyers, had given up to the crown the rights of regalia, as toll, coining money, mills, fisheries, with the power of seizing the great fiefs, and of levying a general capitation tax, and of naming all consuls and judges, but with consent of the burgesses. Frederick had accordingly sent to all the towns strangers to act as judges, under the name of *podestas* ; and these being his creatures, devoted to his interests, were found in constant opposition to the consuls, who, though chosen by him, belonged to the cities in which they were appointed, and had been accepted by the people. Hence the great object of the war on Frederick's part had been to supersede the consular authority, or abolish the office altogether. The right of private war had also been taken from the towns, as well as from the great feudatories and barons at the same diet ; but so manifest an improvement in the administration of the government had excited no avowed opposition, however much it might secretly be disliked by those whose powers of annoyance and oppression were thus restrained.

The position in which the peace of Constance had placed the empire and the towns was widely different from that in which the diet of 1158 had left the parties. All rights of royalty (*regalia*) within the walls of each town were secured to its government, together with all rights which had actually been exercised in the adjoining district or country territory belonging to it. Every town was, moreover, recognised as entitled to levy troops and exercise civil and criminal jurisdiction within its territory. The right of the towns to continue their league, and renew it as often as they pleased, was further declared and confirmed by way of securing to them the performance of the articles stipulated. On the other hand, the rights reserved to the crown were more nominal than substantial. The consuls chosen by the people were to receive, but without any appointment, investiture from the imperial legate, unless in towns in which the bishop or count had been used to give it ; and each town was to swear fealty once in ten

years, to defend the imperial rights against towns not belonging to the league; and, on the emperor's progress through Italy, to provide forage and market for him, and repair the roads and bridges. The only interference of any moment with the municipal governments was the appointment in each city of a judge of appeal for all causes of a certain amount (about sixty pounds of our money); but he was sworn to decide according to the local laws and customs; and could not postpone the final decision of any case beyond two months.

In this treaty, as we have already seen (Part I., Chap. XIX.), were comprehended on the side of the league, Milan, Mantua, Verona, Bologna, and thirteen other great towns; on the imperial side, Pavia, Genoa, and six others. Ferrara had the option of joining within a limited time. Imola and six others were excluded. Venice had joined in some of the military operations, having taken part in the league formed by Verona, Vicenza, Padua, and Treviso in 1164, but had never been considered as comprised in the great confederacy, never having submitted at any time to the imperial authority. Accordingly she would not, by joining in the peace of Constance, give any colour to a claim which she had always successfully resisted. While the other towns had been engaged sometimes in war with one another, sometimes in contests with the emperor and the Roman see, she had risen to a far greater importance than any of them, and at an earlier period. Never having been subdued by the northern barbarians, she claimed to deduce her origin from the ancient state of Rome. Her history and constitution are therefore peculiarly deserving of attention. Of all the municipalities she was the most powerful, and her government was of far longer duration than any other in Europe, her state having grown up to importance at a much earlier period. This subject, therefore, may conveniently be considered before we examine this commonwealth, which on the mainland of Italy arose out of the feudal kingdoms.

CHAPTER XX.

GOVERNMENT OF VENICE.

Origin of Venice—Insular Federacy—Anarchy—Doge created—Venice founded—
 Conquests—Parties—Doge's power restricted—Pregadi—Aristocracy founded—
 Grand Council—Council of Ten—Inquisitors—Spies—Lion's Mouth—Committee
 of Public Safety.

THE Venetians (*Veneti* or *Heueti*), inhabiting the north-eastern corner of the Italian peninsula, were very late brought under subjection to the Roman republic. It was not till the great victory of Marius over the Cimbri and Teutones that their territory was reduced into the condition of a Roman province. It followed the fall of the other provinces during the struggle of the factions which tore first the commonwealth and afterwards the empire in pieces, sometimes falling to the share of one party or chief, and sometimes of another, and occasionally partitioned between contending claimants. The barbarians afterwards ravaged the continental portion of it; but the inhabitants both of the country and of Padua, Verona, Vicenza, and the other towns, found a refuge in the islands, which were never subdued by any of the northern invaders. In those fastnesses the proprietors of the continental territory remained after the retreat of Attila in the year 450; but the peasantry returned to the mainland and resumed their occupation, the owners of the soil continuing to inhabit the islands. Here they established a kind of government formed somewhat according to the model of the Roman, to which they had so long been accustomed. Each island chose its chief, called a *tribune*, whose principal office was the administration of justice; but who received instructions for the guidance of his proceedings from the general assembly, or *comitia* of the inhabitants. Occasionally the tribunes of the different islands met to confer upon matters of common interest, and their decisions bound the whole of this kind of federal body, or insular confederacy.

It should seem that their insular position, convenient for commerce, and their natural habits derived from thence, giving them the command of the coasting trade and the traffic up the rivers of the mainland, their numbers and power had soon increased to a considerable pitch; for early in the sixth century they carried on a successful war with the Selavonians settled on the north-eastern parts of the Adriatic; and in the year 527 they overran and seized upon Dalmatia. The Lombard invasion, in the latter part of the century, drove more of the Venetians into the islands, and the government being feeble, the seventh century was spent in constant quarrels of the different islands and their tribes among themselves; so that the Lombards by land and the Selavonians by sea, taking advantage of these fatal dissensions, harassed the republic, and were on the point of effecting its destruction, when a general assembly, held in 697, resolved upon a measure necessary to save the independence of the state and to extinguish the seditions which were working its ruin. This was the appointment of a magistrate invested with sufficient authority, and holding his office for life. They gave him the title of *doge*, or duke: he was to have the command of the forces, and the power of appointing all offices civil and military, and to exercise the prerogative of making peace and war. In other respects he was to be under the control of the general assembly. This change of government appears to have answered the purpose of those who proposed it; for Paolo Anafesti, the first doge, repelled all the aggressions which had threatened the republic, obtained the acknowledgment of its independence from the Lombard kings, and quelled all the seditions which had disturbed the public peace.

Attempts were afterwards made by the Carlovingian princes to subdue the Venetians, but their only result was causing the seat of government to be transferred, in the year 800, to the island called Rialto, on which, and sixty neighbouring islets, the city of Venice was built. While it was increasing in commerce and wealth, the maritime towns of Istria and Dalmatia obtained from the Greek empire, to which they belonged, the privilege of arming for their defence against the barbarians, and of choosing magistrates for their government. But the piracies of the barbarians kept them in such alarm, that they formed a defensive league, and at the end of the tenth century placed themselves under the protection of Venice, which, partly by intrigue and partly by force,

succeeded in reducing them to subjection. They became provinces governed by Venetian nobles, that is, having justice administered to them and their forces commanded in the name of the republic by those nobles, who bore the title of *podestas*, and the doge assumed the title of Duke of Venice and Dalmatia.

The eleventh century was wasted in factious contests between the leading noble families, of whom the Morosini and Caloprini were the chief; but whether these were cant names assumed by the families as the leaders of the parties, or taken by the parties from families so called, seems to be uncertain. The force of the republic was so weakened, and her councils so kept in a state of inaction, by these party broils, that no extension of her power was effected, nor was an adequate progress made in her internal improvement. But the part which her traders were enabled to take in the crusades greatly extended her commerce during the next century, and her military co-operation in Asia obtained for her not only valuable mercantile privileges in the kingdom of Jerusalem, but the power of planting Venetian settlements there, to be governed by their own laws and their own magistrates. The Venetians at the same time made an easy prey of several of the Greek islands now that the Eastern empire was crumbling to pieces, and they were enabled to extend their footing in Dalmatia with the same facility and for the same reason.

These conquests tended materially to increase the power of the doge, and the people, headed by the nobles, became alarmed for their liberties. During four centuries no check was effectually interposed to restrain his prerogative. A sedition had been raised by the tyrannical conduct of the third doge, who was put to death; and for five years magistrates were elected under the title of master of the forces (*maestro della milizia*), but this plan was abandoned in consequence of their misconduct, and the office of doge was restored with all its former powers. Nor was any permanent change in those powers effected, how frequently soever the tyranny of the doges occasioned revolts and led to their violent deaths, or their depositions, with the punishment of having their eyes put out, a cruelty which the Venetians imported from the East during their conquests in the Levant. During the first century after the office was created, ten persons enjoyed it, and of these six were killed or deposed; but no check had been devised upon their prerogative, except the appointment during one short reign of two tribunes,

whom the doge was to consult before undertaking any measure of importance. But this institution had no permanent duration, and the doges went on as before, extending their power with the increase of patronage and influence which the newly-acquired dominions of the republic gave them, and they were frequently suffered to associate their sons with themselves in the office, and thus to make it for a generation or two hereditary in their families. Seditions as before occasionally broke out; depositions and assassinations of doges took place, though less frequently; but no steps were taken to limit the ducal power until the year 1030, when the dethronement of a doge gave the nobles and the people an opportunity of at length imposing restraints upon the authority of the chief magistrate, before that time only liable to the same control from revolt and personal violence, which in the Russian monarchy is still the only check upon the autocrat's prerogative. But in that year an important change was effected, which for the first time restricted the doge's power. The former plan of two councillors was revived, and their consent made indispensable to all the doge's acts; the joining of the son with the father in the office was strictly prohibited; and upon occasions of importance the doge was further bound to request the attendance of the chief citizens at a council, for the purpose of deliberation and advice. The citizens thus requested were from thence called *pregadi*, and though the doge had the choice of them, as there was a general agreement in opinion and interest among the nobles, and as the people were united with them in all questions relating to the doge's power and the means of resisting it, the power of choosing made little difference, and this council afforded a substantial protection to the community. It was the origin of the most ancient of the Venetian councils.

During a century and a half after this change the combined influence of the nobles and the people introduced a still more important alteration in the government, the foundation of the aristocratical constitution which soon supplanted the ducal monarchy, and continued for above six hundred years to occupy the attention of political reasoners. In 1173 an expedition against Constantinople, under the Doge Vitale Michieli, had signally failed, partly through his feeble councils, but chiefly from the ravages of the plague, which the remains of the fleet brought back to Venice, and occasioned the laying waste of the city. A revolt, the assas-

sination of the doge, a six months' interregnum, were the consequences of these errors and calamities; but those six months were employed in framing a new constitution upon a republican model.

The foundation of the whole was a grand council of four hundred and eighty members, in whom was vested exclusively all the powers not held by the doge, and who were also to share with him all the sovereignty which he possessed. The members were annually chosen, not by the nobility at large or by the people at large, but by twelve tribunes appointed yearly, two for each of the six quarters into which the city was divided, each tribune choosing forty councillors. It never seems to have been doubted that the choice would be confined to the noble houses; but there was a restriction which prevented the tribunes from taking more than four from any one family. The first tribunes appear to have been chosen by the people of each quarter, and for about thirty years there were remains of this popular election. But the council had the absolute nomination of all other offices, and its members soon usurped the power of rejecting whatever names were presented as their successors, thus rendering the annual election a mere form, and retaining the places of councillor almost entirely in the same hands. The council had thus almost come to be permanently hereditary in fact long before it was made so by law. This step was taken a century and a quarter after the creation of the council, and it was taken in consequence of an attempt made by the people to regain their share in the election of the doge. The attempt failed by the cowardice of Tiepolo, whom they chose, and who fled before the steady determination of the grand council. They allowed the popular ferment to subside by delaying the election for a few days after Tiepolo's flight, and then chose Gradenico, who seconded the efforts of the aristocratic party; and in 1297 it was declared by law that none should be excluded at the annual election but those who had done something to render them unworthy of a seat; that the grand council of forty (the *quarantie*) should decide upon the exclusion, and that whoever had twelve votes of the forty should be retained in his place. It was further provided that three electors should be annually appointed by the council to form lists of citizens worthy of being added to the council, the number to be fixed yearly by the doge and senate, and that whoever of the list had

twelve votes of the forty should be elected. This provision was designed to flatter the people, to keep them quiet under the change now making in the constitution, and to conceal the transition which was making, at least in the legal frame, and which in practice had been made already, from a popular to an aristocratic government. But next year a new law was introduced which completed the establishment of the aristocracy. It was provided that those only should be elected who had previously been of the council or were descended from ancestors who had belonged to it. Thus an hereditary aristocracy was finally established. If no further change had taken place it was an oligarchy, not a pure aristocracy, for the supreme power was confined to a certain number of patrician families.

But it has always been found more difficult to undermine the rights of the people, and by a succession of subtle devices to deprive them of power, than to deceive the patrician body and endow a portion of them with the supreme authority to the exclusion of the rest. An abortive attempt in 1299, made by some of the plebeians to rescind by force the law of the preceding year and reopen the door of the council to their order, was succeeded ten years after by a much more formidable conspiracy of the excluded nobles, whom some of the most distinguished members of the council and a still greater number of plebeians joined; and they were headed by a brother of Tiepolo, who had formerly been the object of the popular choice. The plot failed, and some of the ringleaders were put to death; but it was so nearly succeeding, and it had so powerful a support, that the greater number even of its chiefs were allowed to leave the city in safety, and two material changes were made in the constitution, with the view of preventing the recurrence of a similar danger. The one of these was a law made in 1315, but completed in 1319, abolishing the three electors, and entitling every person who had either sat in the council, or was of a noble family, to become a member without any election, further than an examination of his qualification. This finally established the aristocratic constitution. The other change was the appointment of the celebrated *Council of Ten*, and this was effected the same year with the failure of Tiepolo's conspiracy, while the alarm was at its height which that event had occasioned among the whole patrician body. This council was at first named only for two months, with a commission to

watch the movements of the banished conspirators, and to prevent any renewal of their attempts. It was, in the strictest sense of the word, a dictatorship; for it was vested with absolute power to arrest and punish summarily any nobles suspected of treason or felony; to dispose of the public treasure, and generally to exercise all the powers of the grand council for the safety of the state. But armed with such authority, it became immediately a permanent body. At first it was continued for three years, with a provision that each member should be re-elected or excluded at the end of four months; afterwards it was adopted as an integral portion of the government, and, next to the grand council, it was the most important branch of the constitution. Indeed it may be regarded as having superseded the grand council itself, but for the control retained over it by that body continuing to choose it for short periods of time.

Although called the *Council of Ten*, it consisted of seventeen members, all taken from the grand council and chosen by it; ten, called the black (*neri*), from their official robes, and chosen at four meetings in the months of August and September—six, called the red (*rossi*), for the like reason, and chosen every four months, three at a time; consequently the ten held their office for a year, and the six for eight months. The doge alone held his place in it for life, and acted as president. The whole members of the grand council were eligible, with one exception; two persons of the same family, or even of the same name, could not be chosen; an example of the extreme jealousy of each other which prevails among all the members of an aristocracy, as we have already had occasion to observe (Pt. II. Chap. v.). The proceedings of the Ten were all secret; the accused was not confronted with the witnesses; he did not even know their names; the punishment of death was inflicted sometimes in public, sometimes secretly; and then the body of the criminal was exhibited, or he was only announced as having been put to death. The members were not responsible for their conduct either individually or as a body, and from their sentences there lay no appeal. Though in general they acted arbitrarily and without any regard to law, they occasionally laid down rules for their guidance when they were apprehensive that they might be induced to review their decisions. In that case they sometimes fixed a time within which their sentence should not be changed, or determined the number

of voices which must concur to alter it. Like all the Italian tribunals, it used the torture both to the party accused and the witnesses. As if the powers of this council were not sufficient to secure a vigorous administration, there were three of its members who in succession held for three months the office of *inquisitors*; they could order the instant execution of any citizen not noble, and inflict upon the nobles themselves any punishment short of death: to inflict capital punishment upon a noble required the vote of the council at large, and the presence of fourteen members. As might be expected, the existence of such a tribunal led almost from its creation to the employment of spies in an abundance, and with a reliance upon their information and inventions, unknown to any other system. It was not even necessary that the secret informer should be seen by the council or inquisition. Boxes (called *Lions' Mouths* from their form) were placed in different parts of the city, into which any one might fling his denunciations. The keys of these boxes were intrusted to the inquisitors. The punishments ordered by the inquisitors were always inflicted secretly in the prisons.

The Council of Ten, as might easily be foreseen, speedily usurped the whole authority and power of the government; but, what could not have been expected, it never made any attempt whatever to continue its existence and erect itself into a body independent of the grand council. On the contrary, when the grand council refused to re-elect it, which it might at any time do effectually by withholding the number of votes necessary to constitute an absolute majority,* the Council of Ten submitted, and a kind of interregnum took place, until the grand council thought proper to revive the governing body. This happened for the first time in the year 1580, and the last instance of the kind was in 1761, when the jurisdiction of the Ten was confined to criminal cases, and their power in other respects somewhat limited.

With the exception of their never having continued their own authority, the relation of the Council of Ten to the grand council closely resembled that of the Committee of Public Safety to the National Convention in the French republic; and it secured to the state many of the advantages which France derived from that too celebrated committee. All plots, all attempts to plot against the

* A majority of the whole members of the Grand Council was required for the election of each of the Council of Ten.

government were rendered impracticable by a system of vigilance, jealousy, spycraft, sudden arrest, and summary punishment by which, while it made every man suspect his neighbour, besetting and surrounding with peril all the common intercourse of social life, stifling the seditious purpose before it could find vent in words—an extraordinary degree of vigour was imparted to the administration of affairs both civil and military, foreign and domestic. The continuance of such a constitution as the Venetian for so many centuries can only be explained by the constant watchfulness of this dictatorial and inquisitorial body, the terror which its proceedings inspired, and the mutual distrust which they sowed universally among the citizens. It must, however, be added, that the body of the people, though excluded from all share in the government, felt this tyranny far less than the privileged classes; and that the burthen of maintaining the public expenditure fell as lightly as possible upon the inhabitants of the city, the foreign dominions fully defraying it in all ordinary times. The aristocracy was popular at Venice; the government was at all times beloved by the people. It pressed light upon them in every way; its despotic powers were hardly ever exercised but upon the privileged classes; and it was both successful in keeping the peace at home and in raising the name and extending the commerce of the people abroad.

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CHAPTER XXI.

GOVERNMENT OF VENICE.

(Continued.)

Doge—Complicated election—Two objects kept in view—Neither attained—Examination of the process—First object to prevent faction—Second object to prevent corruption—Jealous nature of Aristocracy—Limited power of the Doge—Ducal Oath—Officers to watch and punish the Doge—Avogadors—Doge's prerogative—Senate or Pregadi—Collegio—Judicial power—Quarantia—Offices filled by Commoners—Procurators of St. Mark—Savii—Provincial offices—Government of Candia.

WHEN we have examined the structure of the Grand Council, and its committee the Council of Ten, we have in fact examined the whole effective portion of the Venetian government; the real power resided in those bodies, and all the other authorities of the state were subordinate. In considering these, therefore, we are rather about to view the arrangements, the details, by which the Grand Council and Council of Ten carried on the government, than to contemplate any other power in the state which could be said to have a substantive existence. It is, however, necessary to examine those nominal authorities, because they have at all times attracted the regards of political reasoners, and also because their structure is calculated further to illustrate the jealous character of the aristocratic system and the refinements of Italian polity.

The first of the constituted authorities that claims our attention is the doge, once the master of the state, but ever since the creation of the grand council in 1173, an officer of rank only, with no real power and very little influence of any kind. The choice of the doge was, as we have seen, at first entrusted, for once only, to a committee of eleven; soon afterwards the Grand Council assumed it permanently, appointing first twenty-four, and afterwards forty of its members, from whom eleven electors were chosen by lot. But in 1249 a new and very complicated manner of exercising this elective power was devised, which continued to be practised as long as the republic lasted, that is, till the year 1798. First

of all, thirty of the council were drawn by lot, and these again were reduced by lot to nine, who selected, by a majority of seven at least of their number, forty of the council, and those were by lot reduced to twelve. These twelve elected twenty-five of the council, which were reduced by lot to nine, and the nine selected forty-five, of whom eleven drawn by lot selected forty-one of the council to be electors of the doge. A majority of twenty-five of these electors was required to join in choosing the doge.

The prevailing view in this combination of choice and chance must have been twofold—to prevent the combination of partisans and thus neutralize or weaken party influence; and to prevent the knowledge of the parties who should elect, and thus frustrate or obstruct the exercise of bribery or other undue influence. The first of these objects could not be at all secured by the contrivance; the second could only be most imperfectly attained.

1. In order to try its effect upon party, we must suppose two or more factions to divide the great council; suppose, too, an aristocratic, which for shortness we shall call the Whigs, and a monarchical, the Tories, and first suppose them unequal in the proportion of two to one. The chances are that the first lot gives twenty Whigs to ten Tories, and the second six Whigs to three Tories. As seven must then concur to choose the forty, it is certain that the minority may make terms; but nothing can be so improbable as that they should obtain, by holding out, any proportion of the forty which could affect usefully for their purpose the next or fourth operation, the lot reducing the forty to twelve; for unless they get so many of the forty as to give them a fair chance of having seven out of the twelve, they do nothing, a bare majority of the twelve being enough to choose the twenty-five by the fifth operation. The twenty-five, then, will be all Whigs, and so will of course the nine to which they are reduced by lot. These, by the seventh operation, will choose eleven Whigs, whom the lot reducing to eight, these eight will choose forty-one, all Whigs, twenty-five of whom will, therefore, by the tenth and last operation, choose a Whig doge. In fact, the whole result is certain, notwithstanding the complication, after the two first lots; and the complication then becomes useless. These two lots make it a chance who will have the choice of doge, and make it possible that the minority should choose him—make it even possible, though not likely, that,

if the council is divided so as to have four Whigs for one Tory, the small Tory minority should choose him. If by lot seven Tories and two Whigs are found among the nine, this is inevitable. It is the result of the chance which presides over the first operation, and all the subsequent complication cannot counteract it. If there is any advantage in a scheme which makes it possible for a small minority to bind the whole body, this is secured, but it is secured by the lot, and not by the combination of lot and selection.—Again, if parties are very nearly balanced, the lot may give one the free choice; but it may also give a narrow majority of the nine; in which case the Tories might obtain a large minority of the forty. But this would be wholly unavailing unless the next lot gave them a majority of the twelve, because a bare majority of these choose the twenty-five. Therefore the only effect of the complication here is to introduce a second chance, which the majority of five to four in the nine would probably struggle to make a small chance by not allowing any considerable number of Tories to be of the forty. It is quite clear that in every possible case, and whatever division we suppose to exist in the council, there is an end of all doubt and an end of the whole operation as soon as the twelve are chosen. For a bare majority of these twelve decides the election, and the remaining five operations are absolutely thrown away. Thus the only possible effect of the contrivance in preventing the combinations of partisans is the introduction of chance by drawing lots for one of the electing bodies. As the absurdity of choosing the doge by lot would have been too glaring, the lot is only applied to the choice of electors. But as far as it is intended to prevent faction from interfering, the choice of the doge depends upon chance, that is, the lot decides from what party he shall be taken. The complication of the process manifestly has no effect at all. Nor can the effect even of the lot very materially obstruct the operations of party; the factions will always be represented in the thirty first drawn by lot, and all their intrigues will be practised, only within that narrow range, instead of having the whole council for their field. The history of election committees in the English House of Commons proves how impossible it is to exclude party from a much smaller number of persons chosen by lot.

2. It may be admitted that the lot threw some impediment in

the way of corruption and intimidation, preventing those undue influences from being used towards the greater number of the council. When, however, the thirty were once drawn and then reduced to nine, it is not easy to see how those nine should be exempt from the arts of the candidates. Even if they were to vote secretly, the bargain might be made by the candidate or his party, that the bribe should only be paid if earned, that is, upon the final election taking place. If we suppose seven of the nine to be thus bought, it is clear that they could secure the event by choosing as many of the forty as made it certain a majority of the twelve should be friendly, and then the election was certain, always supposing, as we have done throughout, that there were a sufficient number of sure voters in the council itself; and we shall presently see that numbers and the dependent circumstances of most of its members after the earlier times of the constitution, always secured the existence of many voters ready to take any part. The obstruction given to bribery and intimidation, be it greater or less, was plainly confined to the first operation of the lot. It is not possible to understand how the combination of choice and lot, in a word, how all the subsequent operations, could increase the difficulty of bribing; but it is manifest that the necessity which the contrivance created of finding voters at each stage of its operation, in the Grand Council, extended the field of corruption. Each time that any new voters were to be selected, as the twenty-five, the forty, the forty-one, it became necessary to corrupt or intimidate those who were thus chosen; and there would have been much less of those undue practices required, had the operation been confined to a choice of the doge by the first thirty upon whom the lot had fallen.

In one respect it may, perhaps, be supposed that the complicated contrivance has a beneficial tendency; the repeated choice, and in two instances by greater numbers than the bare majority, may be conceived to secure fuller deliberation, and to give the minority some influence, some power of effecting a compromise. But, then, the admixture of chance by the several times the lot is interposed can have no effect, except to disturb the process of selection; and a single choice, by a defined majority, would probably give as great a security against rash election, and as great a probability of a middle course being taken, as all the five selec-

tions of the system. The door which the lot opens for a minority of the electors by possibility determining the result is of itself a decisive argument against it, if there were no other.

We may, therefore, confidently affirm that this contrivance, which has so often been vaunted as the perfection of skill, as a refinement in political wisdom only to be expected from the subtle genius and long and various experience of Italian statesmen, is wholly undeserving the praise lavished upon it. There can be as little doubt that it abundantly proves the refining nature of these politicians, and illustrates the morbid jealousy, the ever-watchful suspicions of aristocratic rulers,—no sooner bestowing any power than they are alarmed lest it be used against them,—compelled to vest authority and discretion in some hands, and then fettering its exercise by checks, and not unfrequently seeking security against those checks themselves.

The same spirit was displayed in the control provided for the exercise of the doge's authority, which presided over the nomination to the office. He was bound in all things by the advice of the six councillors, called the red (*rossi*), who formed with him the *signoria*, or little executive council. Originally he had the choice of his councillors, the *pregadi*, as we have seen; but about half a century after the revolution in the year 1229, the choice of the *pregadi* was vested in the great council; and, their number being increased to sixty, they were formed into a Senate, six councillors having ever since the revolution been assigned to the doge, who were chosen by the Grand Council, and only chosen for eight months, four going out every four months, so as to be constantly under the superintendence and control of the council. These six formed, also, as we have seen, part of the Council of Ten. Not only was the doge bound to follow the advice in all things of these six delegates and representatives of the great council, but he could not leave Venice without the Great Council's permission, receive foreign ministers or open despatches; except in presence of the Little Council, nor even have his effigy upon the coin, though it bore his name.

It might have been supposed that the doge's authority was sufficiently controlled by this arrangement; but this did not suffice. Before the revolution of 1173, and while the doge was a real monarch, the principal checks upon his power were the promises which he made in the oath which he took at his election,

and which received alterations and additions almost each time the office was vacant. These promises were continued after the revolution, and even after the ducal power became a mere shadow. In 1210 they were formed into a kind of code, in one hundred and four chapters, and this code was continued during the rest of the thirteenth century. But the oath continued ever after to be taken, and it was, in fact, a renunciation of all power and prerogative. It bound the doge to execute the decrees of all the councils, to hold no correspondence with foreign powers, not to receive their ambassadors, or open their despatches, except in the presence of the little council, the six; not even to open the letters of any of his subjects, but in the presence of one of the six; neither to acquire nor to hold any property out of the Venetian territories; and to permit none of his relations to hold any office whatever for his benefit, either within the territory or without. Adding insult to tyranny, this oath further bound him never to make any attempt at increasing his power, nor ever suffer any citizen to kneel before him or kiss his hand. At the same time with the formation of the senate (1229) five magistrates were created for the express purpose of receiving this oath at each vacancy of the doge's office, and of making, under the great council's direction, such additions as might seem necessary for causing it to be better observed. They were called *correctors of the ducal oath* (*correttori della promissione ducale*), and three other magistrates were also created, called *inquisitors of the late doge* (*inquisitori del doge defunto*). Their office was to examine minutely the conduct of the late doge, and, comparing it with the laws and with his oath, not only to condemn his memory, but to fine his heirs in case he was found to have violated either.

But the constitution did not trust to the effect of this posthumous inquiry, or exempt the doge, any more than his nominal subjects, from responsibility at all times. There were three magistrates appointed for the express purpose of watching over all the laws, and restraining all violation of them, whether by the doge, or the nobility, or the people. These were termed *arogadors of the community* (*arogadori della commune*), and they were authorized to bring the conduct of the doge at any time before the great council. All attempts at usurpation could thus be at once punished, by whomsoever made. In truth, the prerogative of the doge was reduced to little more than his rank and an inconsiderable patronage. The

letters of credence to ambassadors and other similar commissions bore his name before the other authorities, though he was not allowed to sign or to seal them. The foreign despatches, which he was not allowed to open, were addressed to him. He presided in the councils, and had the right of proposing any measure without the previous assent of or communication with any other authority. The prebends of the Cathedral of St. Mark were all in his gift, as were the nominations to the knighthoods of the same order. His revenue was only 12,000 ducats, or 3500*l.*, which seemed to render the exemption of his family from all sumptuary laws somewhat of a mockery, the more especially as neither his sons nor brothers could fill any place of importance, nor were they allowed to receive from the pope ecclesiastical preferment, with the sole exception of the cardinal's hat.

Thus it might most truly be said, in the words of the old proverb respecting this unfortunate functionary, that he was a king in his robes, a captive in the city, a private person out of it (*rex in purpura, in urbe captivus, extra urbem privatus*). The saying adds that he was "senator in curia." He presided in the *pregadi*, which, after 1229, became a senate. It very easily obtained the superintendence of all matters relating to trade and to the foreign affairs of the republic, and prepared all measures for the deliberation of the great council. But it was composed of sixty elected by that council, and as, in the course of time, it became customary for the Council of Ten, all the ministers, and the criminal council (*quarantia*), also to attend it, the consequence was that it really contained all the important members of the great council, and the most material deliberations of the government were conducted by it: in fact, it represented the great council. Thus in the *pregadi* resolutions were taken for making peace or declaring war, choosing councillors, appointing ambassadors, regulating trade, directing expenditure, imposing taxes. Its members in later times were about three hundred; but the substantial power over its deliberations was of course exercised by the Council of Ten.

The body next in importance to the *pregadi* was the college (*collegio*), of which the signoria, or the doge, and his six councillors formed the principal members, though there were added about eighteen others, being the chiefs of the *quarantia* and the ministers of different departments. In the College all foreign ambassadors were received, and the despatches and the petitions

addressed to the government from any quarter were there read. It was understood to meet every morning.

The judicial power was, very early after the revolution of 1173, taken from the doge. The criminal jurisdiction was in 1179 vested in a council of forty, called the *quarantia*, or the old criminal council, to distinguish it from two others, also composed of forty each, and exercising criminal jurisdiction. All these bodies were chosen by, and out of, the great council; their secretaries, as those of all the councils, might be commoners, and excepting the office of chancellor, the dignity of which was greater than its authority, these were the only places open to the commons at large. The chancellor was generally chosen from among the secretaries, and almost always a commoner. The old *quarantia* was divided into three departments, the chiefs of each of which sat in the college.

The office most in request at Venice, after that of doge, was the place of Procurator of St. Mark; these procurators were nine in number, and held their places for life. They had jurisdiction over charitable foundations, causes testamentary and tutorial, and kept the archives of the state; they had also the power of protecting debtors from the extreme rigour of the law in favour of creditors. Their functions, and the tenure of their office, gave them considerable weight, and the doge was generally chosen from their body.

Of the counsellors, or ministers of different departments, some had, and others had not, seats in the college. The five ministers of the Terra Firma provinces (*savii di terra firma*) and the five ministers of marine (*savii delle ordini*) had seats in that body. But by far the most important offices under the republic were those of the provinces. In these the governors and judges were at all times Venetian nobles, appointed, and appointed only for a time, by the government—that is, by the ruling powers in the great council; and three of them, the Morea, Candia, and Cyprus, were always termed subject kingdoms. The example of Candia will serve for the others also. During the four centuries that this fine island belonged to the republic, its affairs were administered by a chief governor (*procurator-general*), with four subgovernors (*proveditori*) under him, for the four provinces into which the island was divided. Judges (*rettori*) were likewise sent from Venice, and each of them was assisted by two counsellors, natives of the island. The administration of the towns was

in the hands of the Candiotes, who formed the municipal councils. The Candiote nobles had feudal privileges; but they were bound to have a certain number of militia among their dependents ready for the public service. This was reckoned at 60,000; so that the numbers of the people must have been then much greater than they are now; for they are at present only estimated at 300,000. The wars with the Turks for the possession of Candia, in the latter part of the seventeenth century, are supposed to have cost the republic twenty-five millions of ducats.

CHAPTER XXII.

GOVERNMENT OF VENICE.

(Concluded.)

Great vigour of the Government—Comparison of dominions with those of England—With those of Rome—Venetian tyranny—Examples: Carrara; Carnagnola; Foscari—Firmness and vigour—Military policy—Equalizing laws—Merits of the system—Provincial Government—Oligarchy substantially established—Comparison with English Government—Scottish Parliament—Meanness and pride of Venetian Nobles—Improvements in modern times.

WE have now examined the details of this singular constitution, as far as it is at all necessary for understanding in what manner, and according to what arrangements, the sovereign power residing in the Great Council, and its committee, the Council of Ten, was exercised in administering the government. But we must never lose sight of the real and efficient ruler, the Council of Ten; for that was at once the mainspring and the regulator of the whole machine.

The Council of Ten, and the system which it administered, may be regarded as the natural and genuine growth of the aristocratic scheme. A government thus constituted must, as we have before seen, be subject to constant apprehension from two different quarters, the dislike or restlessness of the people who are excluded from power; and the ambition, sometimes of the more powerful of the privileged class, sometimes of the others who are jealous of influence unequally distributed. Party being the constant attendant of aristocracy, unless it can find a vent, as in the representative system, it will work by intrigue and conspiracy. The constant alarms which this risk excites, and the constant desire to prevent any undue power being acquired by one or more of their own number, naturally gives rise to such jealous precautions as created and maintained the Council

of Ten. But it also in part owed its continuance to the necessity which every popular government, whether aristocratic or democratic, always finds inevitable, of supplying the natural want of unity and concentration in the executive power. The Roman aristocracy early resorted to an occasional dictatorship, and continued its recourse to this expedient when gradually mixed up with democratic institutions, sometimes by appointing a dictator, sometimes by arming its ordinary magistrates with dictatorial powers. The Athenian democracy would, in all probability, have much longer preserved its preponderance in Greece, and its independence of a foreign power, if its executive administration had been in firmer and steadier hands. The Spartan aristocracy, which was paralysed by the want of an executive, hardly ever undertook extensive operations, and generally failed when it did. But both the Spartan and Athenian governments had recourse to expedients for preventing revolution; the ostracism of Athens was dictated by jealousy of revolutionary attempts; the impeachment for illegal legislation (*γρᾶφῃ παρανομίᾳ*) was the fruit of similar alarms, and of the people's distrust of their own fitness for self-government. But in Venice alone was the public alarm, the consciousness that it required something to obviate the risk of conspiracy, and supply the natural defects of popular government, reduced to a system; in Venice alone was the dictatorial power made an integral part of the constitution, and the results of it are sufficiently remarkable. No government ever had so long a duration as the Venetian with so little of sudden and violent change, and so few shocks from attempted revolution; nor is there any instance of foreign dominion being acquired, and an influence sustained so disproportioned to the natural resources of the state. England herself, supposing her to possess at will the whole of her East Indian as well as colonial empire, has a population of about one-fourth part of her remoter subjects, and a mass of wealth incomparably greater than that of all her dependencies together. But Venice, with a number of inhabitants which never reached 200,000, perhaps never exceeded 150,000, had between three and four millions of people subject to her, not only possessed herself, from the beginning of the fifteenth century, of her rich Italian provinces in the Terra Firma—Verona, Vicenza, Padua,—but

had, from a much more early period, nearly all Dalmatia, had carried her arms by sea and land into the Eastern empire, taking its capital, Constantinople, and obtaining for her share two ninth parts of the remaining Latin empire—retained possession of the Morca for three centuries (from 1204 to 1492), and again took it from 1684 to 1715—held Cyprus for a century (from 1473 to 1571), Candia for above four centuries (from 1224 to 1669), the Ionian Islands for an equal period—and gave such uneasiness and alarm to other states, that a grand alliance was formed to reduce her power by no less important monarchies than France, Spain, Austria, and the see of Rome. The commercial wealth of this extraordinary commonwealth no doubt furnished the resources which enabled its government to work such wonders; but the frame of that government, so well calculated for the councils of deep, unscrupulous policy, and for prompt and vigorous execution, must be allowed its full share of the merit, if conquests can ever deserve admiration; and the extraordinary ability displayed for so great a length of time by the Venetian statesmen who administered its powers has certainly no parallel in the history of any other nation. Ancient Rome could alone have furnished one, and that only if the circumstances had been materially different in which her conquests were made, and if, instead of having in only one instance met with an adversary equal in skill, she had, in all instances but one, been matched against nations as far advanced in civilization as herself. This was the case with Venice in all her wars, saving only those waged against the remains of the Latin empire.

A system of polity which could thus unite lasting stability with extraordinary vigour, draw forth the resources of its subjects, increase them beyond what their nature seemed to permit, apply them with steady determination, and almost constant success; which could train a succession of the ablest statesmen, while it fostered the enterprises of the richest merchants, and controlled the ambition of the one and the influence of the other, so as to make both work as parts of the machine, without ever obstructing its operations, and render all men the mere instruments of the public aggrandisement, in which their individual importance was habitually merged,—presents no ordinary claims to our admiration. — “*Has tantas virtutes ingentia vitia æquabant;*

inhumana crudelitas, perfidia plusquam Punica, nihil veri, nihil sancti, nullus deorum metus, nullum jusjurum, nulla religio" (Liv. xxi. 4).—Nothing can be more profligate than the disregard of all principle, nothing more daring than the contempt of all engagements, nothing more heartless than the cold-blooded and calculating cruelty by which the republic was ever ready to compass her objects, prevent opposition or extinguish it, and occasionally to seek, like animal instinct, for the gratification of revengeful passions,—as like an individual she yielded to alarm, and to the excess of fury which fear alone engenders. An aristocracy in full and uncontrolled dominion, subject to the passions of the multitude, but pursuing their gratification with the determination of an individual, yet exempt from his responsibility, and able to keep itself in countenance because of its numbers, could alone have been able to do the wicked things with which all authorities have charged the Venetian government: things of which some were murders under the mask of public executions,—others, though committed in public, had not even the doubtful palliation of that pretext,—and not a few, being perpetrated in secret, may have been no better than common assassinations. When all that the people were suffered to see or to know was the strangled corpse of some obscure person, with an inscription that he had been put to death in the night for treason, and when the whole particulars were veiled for ever after in a secrecy which if broken would have brought down the same fate on the councillor or the clerk, we can certainly give no examples to illustrate what, if human nature were the same at Venice as elsewhere, must have been the inevitable abuse of powers so exercised. But enough remains on record of the more public transactions of the government to show how far men can go when they themselves form the public whose opinion alone they regard, and are subject to none of the personal responsibility which checks even the most absolute despots.

The family of Carrara had been lords of Padua for nearly ninety years, and all Italy had produced no more gallant, accomplished, or humane prince than Francis II. When, at the beginning of the fifteenth century, the Venetians made war upon him as part of their policy, then turned towards obtaining dominions on the mainland, he resisted the attacks of their merce-

nary troops with a far inferior force, and after prodigies of valour and of fortitude, in the midst of famine and of a pestilence such as perhaps never ravaged any other city,* he and his two sons were overpowered, and were made prisoners by acts of the most shameless perfidy on the part of the Venetian government, his other two sons having been despatched to Florence. The *pregadi* proceeded to try them, and it was expected they would have been banished to some distant fortress; but the Council of Ten caused them all three to be strangled in prison, and this after they had been honoured with a solemn public reception suited to their rank, and placed on the same bench with the doge. The signoria (or executive council) then offered a reward of 40,000 florins (equal in value to 8000*l.* of our present money) to whoever would seize and bring to Venice alive either of the other two sons, and 3000*l.* for the assassination of either. It is honourable, perhaps, to the Italians of the age that none ever claimed the reward. One of them died a natural death: but, twenty years after the war had ceased, when all revenge would have been extinguished in the bosom of any single tyrant, the implacable Council of Ten, having taken the surviving brother in an attempt upon Padua, put him publicly to death.

A few years before this, Carmagnola, the most skilful general of the age, after leaving the Milanese service, had been twice employed by the Venetian government, and had gained for it the most important victories, which, after adding Brescia and Bergami to their dominions, encouraged them to meditate the entire conquest of Lombardy. After a peace, to which this ambitious republic reluctantly submitted for three years, they again made war upon Milan, and their great captain proved no longer victorious, though their chief disaster was the loss of a fleet, with the command of which he had nothing to do. He was invited to attend the senate (*pregadi*), that the conditions of a negotiation for peace might be discussed. Received with the utmost respect, attended by a brilliant procession, he was placed in the seat of honour, and loaded with professions of esteem and admiration. The consultation on which his advice was desired lasted till a late hour, and he was pressed to let his

* Some accounts say that 40,000 perished of it in Padua; and none rate the number lower than 28,000.

suite retire for the night after the fatigues of their journey. No sooner was he left alone with the senators, than they ordered in their guards, who hurried him to prison and loaded him with irons. The pretext of this enormity was, that his late want of success had arisen from wilful neglect or treacherous dispositions. Next day he was put to the torture; he suffered the more excruciating torment that he still had a wound open which he had received in the service of his savage executioners; and the story ran that he had in his agony confessed the charge. What we know for certain is, that a few days afterwards he was publicly executed, with a gag in his mouth to prevent him from denying this imputation upon his memory. That such a body as the Committee of Public Safety, during the ferment of a revolutionary crisis, was capable of judicially murdering an unsuccessful general, and that the mob, of whom it was alternately the tyrant and the slave, were capable of ascribing any reverse of fortune to treachery, no one will think of denying; nor would the infliction of torture have been spared at Paris, any more than it was at Venice, had such an atrocity formed part of the jurisprudence of the age; and we may even admit that the gagging of the victim has not been without its parallel in the more recent scenes. But not even the tribunals of 1793 and 1794, nor the wildest and most savage of the mobs to whom massacre then became familiar, were capable of the cold-blooded plot which the regular government of Venice formed as an act of its ordinary administration, or of the consummate treachery with which the select body of its patricians all joined in carrying it on. A more signal proof cannot be imagined of the degree to which men banded in parties, and looking only to their own order, learn to lose the power of blushing as well as of feeling.

Francis Foscari had been doge during the brilliant campaigns of Carmagnola, and had by his councils been a strenuous promoter of the Lombard war, so long an especial favourite with the nation and its rulers. His popularity and an influence extraordinary in so crippled an office, but acquired by the talents, the courage, and the firmness which he had uniformly displayed, raised the jealousy of the senate and the Council of Ten, subjected him to an unrelenting vigilance; but nothing could be found in all his proceedings to justify a suspicion in a country where sus-

picion was fatal to its object. Of his four sons, one survived; and against him, to the great joy of the council, a Florentine exile, settled at Venice, preferred in secret a charge of receiving some presents from one of the Viscontis, enemies of the republic. He was put to the torture; under its extremities he made a confession; and he was banished for life. His wretched father, now in his eighty-sixth year, and bent down by family afflictions, was desirous of having his office taken from him, his oath and the law preventing his resignation; but the Council refused him this favour, and insisted on retaining him in a position which every day added to his sufferings. One of the inquisitors of state was assassinated. Upon the mere suspicion arising from the son's servant having been seen in Venice, both he and his master were cruelly tortured; but no confession was extorted. The real assassin on his death-bed confessed his crime; but this could obtain no relaxation of the more severe exile to which Foscari had been condemned upon the suspicion now proved to be wholly groundless. The torments he had suffered produced insanity; he was suffered to revisit his family at Venice, but sent back to the place of his banishment the moment his reason returned. There he wrote a letter to the Duke of Milan and let it be seen, for the express purpose of obtaining his recall to Venice in order to be tried for the offence. The inexorable Council recalled him, and when the cause of writing the letter was stated in his defence, they a third time ordered him to be tortured, in order to try if he would maintain his story. He did so, was sent back to his exile, and as soon as he landed died of the agony he had endured. There being no longer any means of making the unhappy doge suffer through his family, the execrable Ten, now at the instigation of Loredano, a personal and hereditary enemy of the Foscari, resolved to humble the old man by insults. They ordered another election, and desired him to resign; he pleaded his oath, and at length they removed him by a compulsory decree. The public voice was raised in accents of indignation at such treatment, such continued persecution of this venerable person, so long the favourite of his countrymen. The council issued a proclamation, forbidding all persons to speak upon the subject on pain of being carried before the state inquisitors. Foscari died suddenly, but it is supposed a natural death, at the moment his successor's election was proclaimed.

Of the government's jealous nature abundant examples have already been given; nor did the former services of those who were the objects of its suspicions at all operate in allaying them, even where no apprehension of ambitious encroachment could be entertained. Carlo Zeno was the most distinguished person of his time, both for his great capacity, which had rescued the republic from extreme danger, and as being one of the most irreproachably virtuous of her citizens. He was accused before the council of having received a sum of about 100*l.* from Francis Carrara, whose accounts showed the payment merely, without stating on what ground it had been made. Zeno at once admitted the fact, but stated that it was in repayment of a sum he had lent Carrara while in banishment at Asti. His character made it impossible for any of his judges even to charge him with corruption, and yet they deprived him of all his employments, and condemned him to imprisonment for two years, as if to punish him for having proved that their suspicions were utterly groundless.

As a last illustration of the courage and confidence produced by supreme power being entrusted to a select body, or a party looking only to itself, and above all responsibility, may be given the proceeding against the celebrated Marino Falieri; and it is an instance in which the conduct of the government may be considered as free from blame. In this case the popular feeling was on the doge's side; his wife's virtue had been attempted by one of the chiefs of the council; a most inadequate reparation had been made by the offender's colleagues; the citizens, whose families had for some years been invaded by the young nobles in the same manner, made common cause with the doge; Bertuccio, a leading man among them, had himself suffered from the licentiousness and the insolence of these privileged intruders; and the consequence was, a conspiracy formed to chastise the offenders and to overturn the aristocratic government which protected them. The secret of the plot, however, was betrayed on the eve of its execution; and the usual expedient of torture being resorted to, obtained a confession that the doge was implicated. He was brought to trial immediately before the Council of Ten. As there had been no instance of a doge being thus treated, the council called in as assessors twenty persons of the highest rank, and this *sonta*, or *quinta*, became a permanent body as we have seen. He was condemned to death and executed, but with closed

doors, as indeed the whole proceeding had been conducted in secret. One of the council appeared immediately at the window with the bloody sword in his hand, and informed the assembled multitude that "a great criminal had fallen by the hand of justice." The doors were flung open, and they saw the headless trunk of their favourite weltering in his blood. Now it may safely be affirmed that in no other government could the extraordinary step of putting the chief magistrate to death as a common culprit have been taken in this manner. There was no precedent of his being amenable to the law; and though he undoubtedly was so by the constitution of 1173, the acting upon this for the first time without the presence of the public, and then executing the sentence upon a popular prince, in a cause known to be favoured by the people, showed a degree of confidence in themselves and their order on the part of the Council, which we should in vain look for in any but an aristocratic government. A despotic court would have secretly poisoned, or secretly banished or imprisoned, the powerful enemy whom it did not venture openly to try and punish. A popular government, while inflicting an extraordinary punishment, would have sought support in publicity for its doubtful authority. The Council of Ten did not even fortify itself with the sanction of the body of which it formed a part; but joining to itself a handful of leading men, tried, condemned, and executed the doge, and only let the people know of the proceeding after it was terminated.

We have said that the course pursued by the Council in this instance was justifiable, always of course excepting the mode of trial and the torture, for which the judicial system was to blame rather than those who administered it. The disregard of the popular voice can certainly not be reckoned blameable; on the contrary, it is entitled to great respect; and the history of Venice abounds in similar examples, some of which show that the firmness of the Council saved not merely the established constitution, but the independence and the very existence of the republic, which the universal voice of the common people was prepared to sacrifice. When the Genoese, in 1379, had almost entirely destroyed the Venetian navy and taken Chiozza, the port of Venice, from whence the city was itself exposed to immediate and most imminent danger, the firmness of the doge and the government alone checked the universal panic which prevailed. The people

insisted upon making peace upon any terms, and at once abandoning the conflict; the government resisted this base clamour, and affected to put a bold front upon the aspect of affairs; yet so well aware was it of their desperate posture, that it secretly sent ambassadors to accept any conditions, except such as should sacrifice the independence of the republic. The refusal of this offer by Doria's haughty declaration, that "the Horses* of St. Mark must be bridled before the Genoese could treat for peace," at length roused the people to support the government, which had previously taken the determination (like that of the Dutch, in similar circumstances, three centuries later) to abandon Venice and seek a refuge in Candia. The consequences of the Genoese violence and folly are well known; they were themselves, through the signal achievements of Pisani and Zeno, reduced in a few months to ask for the peace which they had before refused to treat of.

The jealousy of the Venetian government has been already remarked, as shown in all the arrangements of its structure, as well as in all its cruel treatment of individuals. But its most singular exhibition was in the military concerns of the state. Though early bent upon foreign conquests, and having from a period before the formation of its aristocratic constitution always held possession of distant territories, the republic never would have an army of its own citizens, nor even suffer a Venetian to command the land-forces employed in its service. Soldiers were hired from the different Italian states, and Dalmatians and Istrians also entered the army. No Venetian noble ever served in it; no soldiers were ever allowed to enter the city, whether in peace or war; and the general was always a foreigner, to whom there were assigned two councillors, as residents at his head-quarters, for the purpose of watching and controlling his operations, on behalf of the government whom they represented. Carmagnola's army consisted of nearly 24,000 of these condottieri, or mercenaries, and the forces employed in the Lombard war amounted in the whole to 18,000 cavalry and as many infantry. On the other hand, the navy was chiefly manned by Venetians; and all their naval commanders belonged to the city. It seems as if the Council of Ten thought it could easily

* The group of four brazen horses, one of the most precious remains of antiquity, forms the just boast of the Place of St. Mark at Venice.

cope with the ambition of any naval commander who should be raised to eminence by his services, but dreaded the conflict with land-forces; or perhaps felt unequal to withstand the junction of a successful general with a victorious admiral.

The jealousy of foreign influence arose from the same source—the fear of any citizen acquiring power dangerous to the state, that is, to the equality among the nobles, which all the arrangements of the constitution were framed to preserve. No precautions could prevent some from becoming wealthier than others, although their entering into trade was forbidden by law until the year 1788, when a proclamation encouraged their engaging both in manufactures and commerce. But the marriage of a noble, or the daughter of a noble, with a foreigner, was at all times strictly forbidden. The apprehension of direct foreign influence likewise operated in the same direction. No Venetian could be a knight of Malta; nor could any priest belong to any of the councils, for fear of papal influence.

We have already stated, that with all its faults, and notwithstanding the cruel despotism which it exercised over the nobles, the Venetian government had great merits as far as the people were concerned. No one under a certain rank was exposed to its suspicions and its oppressions, though any one, by becoming rich and powerful, became also the object of its vigilant superintendence. But that which deprived it of the most burthensome qualities of an aristocracy was the feudal attributes. No castles, no vassals, no territorial possessions either in the mainland or elsewhere, but enjoyed the same influence from their property with the wealthiest commoners. They had no doubt the protection which belonged to their exclusive possession of the government; but although at times (and we have seen one instance in considering the history of Marino Falieri) they availed themselves of their favour with the tribunals to oppress the citizens, yet generally speaking they were far too jealous of each other to allow such unlawful proceedings, and they administered the government so as to control their own order and give satisfaction to the people. They were in no sense of the word an insolent and domineering aristocracy. The turbulence of faction was also in modern times little experienced at Venice. During the eleventh century it had reached its height, and, as we have before seen, suspended the operations of the government in its provincial

affairs; but after that time, and even long before the revolution which founded the aristocratic power, it had almost entirely ceased. There is no instance of such a government having been so little a prey to party dissensions and intrigues. This can only be accounted for by the rigorous control which the Council of Ten habitually exercised over all who could enter into factious measures.

The provincial policy of the government was in almost every respect inferior to its domestic administration, excepting always its treatment of the Italian dominions—those of the *Terra Firma*. The want of an army and fortified places in those provinces, as well as the natural hostility of the feudal nobles, made it necessary to take part with the people against the barons. Accordingly everything there wore a democratic aspect, as in Venice all was aristocratical. Hence the people regarded the government as their protector, and were ready to sacrifice their lives and fortunes “for St. Mark” (as the metropolis was familiarly termed), while the barons were reduced to insignificance, and humbled if not oppressed. In the remoter provinces it was widely otherwise. Though the republic maintained only a small military force to keep them in subjection, her navy was powerful, and the Greeks having a hatred and a fear of the Turks greater than any which Christian oppression could excite, the Venetians could always reckon upon their submission, and even upon their service in the militia. The provincial government of St. Mark, then, afforded no exception to the position that commonwealths have in all ages been the most tyrannical of rulers. The senate was wise enough to leave the local administration in the hands of the natives when all the places of profit and power were engrossed by its own delegates. But with that single exception the unfortunate Greeks and Illyrians enjoyed no consideration. Their markets were subject to the most galling monopoly; their agriculture was oppressed with heavy taxes; the Venetian, whether noble or commoner, never thought of settling, but resorted to the province in order to make money by oppressing it; and the general hatred of the Greeks as being corrupt, and the contempt of the Illyrians as being barbarous, communicating itself to each individual, filled up whatever the government had left wanting in the measure of provincial maltreatment and vexation. The venality and cor-

ruption which marked the government of the eastern dominions, and which tainted the administration of justice as well as of political power, presented a singular contrast to the purity with which the city and the Terra Firma were always ruled.

It remains that we observe how entirely the frame of the Venetian government conformed itself to the law which seems general in aristocratical systems, and became, in the natural course of things, an oligarchy.

We have hitherto been considering that government as it originally was formed, and assuming that its powers continued to be vested in the whole body of the nobles. By law and in theory, no doubt, they did so continue to the very end. But in fact a great change had taken place, though so silently and so gradually, that it is quite impossible to trace it, or to point out the time when and the steps by which it was effected. At first it is probable there were few nobles excluded from the Great Council of four hundred and eighty, and that the whole body of the nobility consisted of no more than six hundred, if so many. It is certain that in those early times there were none of the class who did not possess sufficient fortune and weight to be really component parts of a patrician or aristocratic body. Several circumstances, however, concurred with the natural increase of their numbers and the accidents of life, to create a division of the order into rich and poor. It was very early held disgraceful for a noble to follow any profession but that of arms or public employment; and as they would not serve in the land-forces, their choice was reduced to the navy or the civil service of the state. The law forbade the exercise of trade, and also prohibited their holding more than one office at a time. They were alike prevented from repairing their fortunes by foreign alliances; and marriage with wealthy mercantile families was their only resource. Thus it happened that the numbers increasing to about thirteen hundred, many of them, invested with the whole privileges of their order, were reduced to the lowest poverty, and led a miserable and dependent life, pensioners upon the charity of the state or serving their wealthier brethren in almost a menial capacity. It was reckoned that no less than five hundred received public charity, and several hundreds besides had nothing that could be called an independent fortune. Yet all of these were inscribed in the golden book like the wealthiest; and all of them

equally had votes in every one of the many elections which were continually going on to form the councils that administered the government. There were only about sixty families who really possessed sufficient influence ever to be chosen as members of the government from their wealth and rank—that is, from the number of years they had continued in such circumstances and the number of considerable persons belonging to them, and of other but poorer nobles devoted to their interests. The general existence of bribery and corruption of all sorts between a body of candidates and a body of voters thus constituted may easily be imagined. The original body of nobility received very rarely any recruits. In times of great financial embarrassment nobility was sold to the wealthiest citizens, but for a price so high that few could purchase it; as much as 100,000 ducats, or 30,000*l.* of our money, was required to be paid, and in times when the value of money was twice as high as it now is. The nobles of the Italian provinces were never regarded as members of the order; but in later times they were admitted on proving a noble descent for two centuries and the possession of an income from land of 1600*l.* a-year; conditions with which very few could comply.

Thus there was formed an aristocracy within an aristocracy, in fact an oligarchy—an hereditary body of sixty families in whose hands the whole powers of the government were placed. Every one of the thirteen hundred was equally eligible to all offices from that of doge downwards, as every one could equally vote at all elections; every one could be procurator of St. Mark, governor of Corfu, of Verona, member of the Council of Ten, or Inquisitor of State; but to such offices no one ever dreamt of aspiring, except about ninety or a hundred persons, perhaps not half as many, since only one of a house could hold some of the higher offices, and the accidents of health or incapacity would disqualify several of the select few.

In this respect they accurately resembled our own nobility in England; or rather, in this most material respect, the Venetian and the English constitutions, strange as it may seem, stood till very late times exactly upon the same footing.

The chief power was vested in the House of Commons and those who elected it. Not supreme and unchecked, as at Venice, it was lodged in the privileged class and councils chosen by

them, but still the chief power, and which, if exercised with firmness and union among those who held it, could not be resisted by the other branches of the government. The chief class which chose the House of Commons was a comparatively small number of persons. These had originally formed a kind of minor nobility, the freeholders, or persons holding immediately of the crown, and they had originally sat themselves in parliament, probably in England, certainly in Scotland, and not by their representatives. But to them were afterwards added the chief persons in the towns. By changes which took place in the fifteenth century both in England and Scotland, a portion only of the freeholders was allowed to retain the right of election, and the elective franchise was afterwards gradually restricted to a few of the burghers. Let us cast our eyes back upon the Scottish parliament, in which the resemblance to the Venetian aristocracy is the most striking.

The commons sat in the same chamber with the peers, and originally without any representation. The peers were the greater barons; the commons the lesser or gentlemen. The rest of the community had no share whatever in the government, no political rights; and except that the power of the crown was much more substantial than that of the doge, and that the clergy were not represented by the prelates, the government was an aristocracy of the same kind in its fundamental principles with the Venetian. The introduction of representation took place in both systems, except that in Scotland a portion of the nobles continued to sit in person, while at Venice the whole of the councils became elective for a time; and afterwards the great council, the body of electors, did little more than exercise its functions of choosing the bodies by whom the government was administered. But this leading feature was common to both Scotland and Venice—the enjoyment of political power was strictly confined to a very small class of the community, the great body of the people being wholly excluded from the constitution. It is, however, to be observed that a considerably larger proportion of the people exercised the power of election at Venice, that is, had a share in the government, than in Scotland. There were 1300 nobles, all equally entitled to vote and to be elected to every office and every council, nay, actually sitting in one of the councils. This formed about one in 115

of the people. In Scotland before 1832 the number of voters was 4000, in a population of 2,360,000—or one in 590—five times fewer than at Venice. Even now the proportion is not three times greater than it was at Venice, between the privileged class and the whole body of the people.

But the resemblance holds not only with respect to the origin of the privileged class and its small proportion to the community at large; the manner in which it became divided so as to engender an oligarchy, and the quality in general of its members, were by no means so dissimilar as they might at first sight seem to be. In Scotland, as at Venice, the lesser barons became numerous by natural increase, and many of them fell necessarily into poverty. Take even the body of 4000 voters and compare them with the 1300 Venetian nobles, there will be found fully as great a proportion of the latter as of the former class in a mean and dependent condition. On the other hand the aristocracy within the aristocracy, the natural oligarchy, existed in as great perfection among our Scottish privileged persons as among the Venetian. Though all could by law be elected to parliament and hold offices in the state, in practice there was an impassable barrier between the poor man and either parliament or place. The main distinction between the two systems was that all who could acquire very moderate wealth found among us no barrier excluding them from becoming electors; having once become electors, they could overleap the second barrier by the further acquisition of wealth, but in this respect the two systems were alike. In one other material particular the ruling caste of the northern aristocracy is most honourably distinguished from its parallel in the south; there may have been as much canvassing, bribery, corruption, and undue influence in Scotland as at Venice, but the voters, with all the pride of the Scottish character, were not slaves to that pride of family, so ludicrous if it were not so melancholy, which, while it prevented the high-born pauper from earning an honest independence, and taught him to look down upon the genius of his fellow-citizens, the most wealthy and enterprising merchants in the world, did not prevent the most ancient nobility of Europe* from seeking a discredit-

* Of this there can be no doubt. The Venetian nobility goes back to the seventh century at least—probably to the sixth.

able livelihood by holding up a prelate's train, or bearing a rich lord's sword.

In many respects, and among others in their mingled pride and meanness, and spirit of intrigue, the Venetian nobles continued to the end of the republic such as the form and the practice of the government had made them. But the progress of improvement had greatly mitigated the harsher features of their administration, as well as lessened the more profligate propensities of their character. The possession of wealth became a title to respect in all particulars; the cultivation of letters and the liberal arts raised another description of men to consequence. Society gradually became somewhat more mixed; and the nobles in the same proportion became responsible to public opinion. They still considered their own order to be the tribunal before which, whether as private individuals or as acting in the different administrative councils, their conduct was chiefly to be tried; and therefore many things were done and many duties neglected which a differently constituted state would not have permitted. But the perfidious massacre of the Carraras, the offering rewards for assassination, the torture and banishment of Foscari, and even the execution of Martino Faliero, could no more have happened at the end of the 18th century at Venice, than the cruelties of Lauderdale and the profligacy of Charles could have been repeated, after having stained, and without any risk to their perpetrators, the period marked by Blackstone as the most perfect era of the English constitution.

CHAPTER XXIII.

ITALIAN GOVERNMENTS—VENETIAN TERRA FIRMA.

Terra Firma—Feudal Nobility—Municipal Government in their hands originally—Podestas—Factions—Montechi and Bonifazii—Adelardi and Salinguerra—Vivario and Vicenza families—Rise of the Friars—Their fanatical preaching and influence—Their usurpation—John of Vicenza—Jordan of Padua—Ezzelino da Romano—His prodigious tyranny—Despicable submission of the People—His destruction—Submission of the Towns to others—Levity of Democratic Councils of Padua—Corrected by the Aristocracy—Municipal Governments—Anziani—Gastaldici—Cand della Scala—John Galeaz Visconti—Democracy of Verona and Vicenza—Submission of the People to tyranny—War of Parties in Italy—Hired troops—Condottieri—Military operations—Surrender of rights by the People to Chiefs—Effects of Aristocracy, Faction, Tyranny, on the character of the People—Letters and the Arts.

WE may now proceed to consider those governments which arose out of the feudal monarchies. We examined the scheme of policy created in the Venetian islands in the first place, because it is the only Italian commonwealth which never was subject to either the Gothic, the Frank, or the Saxon kingdoms, and which seems to have arisen directly out of the ruins of the Roman empire. But we have seen that it acquired, though at a comparatively late period, a footing on the mainland by the conquest of Padua, Verona, Vicenza, and Friul. We may therefore now conveniently begin with considering the governments of the *Terra Firma* before this conquest by the ambitious and powerful city.

The barons of *Terra Firma* were distinguished from those of the other Italian districts by a very important peculiarity. Their possessions extended so as to come into the immediate neighbourhood of the towns; but the country was mountainous, bold, and difficult; and hence their castles were much more independent of the burgher power when that rose, as we have shown it did generally, in the twelfth century (Part II. Ch. XIX.). Those nobles, like the others, enrolled themselves among the

citizens of the neighbouring towns, but not, as elsewhere, in order to obtain protection either in their struggles with the sovereign, the prince, or great feudatory, or as against the civic power itself. On the contrary they early conceived ambitious designs upon the independence of the towns, and beside enrolling themselves, they built palaces within the walls and fortified them so as to make each house a castle. In Ferrara there were not fewer than thirty-two such fortresses within the walls. At first they remained united amongst themselves as against the burghers, obtained possession of all the civic offices, kept all the power in their own hands, and domineered over the citizens. But, as always happens in aristocratic governments, party spirit soon gained admission, and every town was divided between two contending factions.

There is nothing more singular in the history of the Italian republics than their at first violently opposing Frederic Barbarossa upon the substitution which he aimed at, of podestas for consuls, and afterwards, when they had successfully resisted him, adopting that institution voluntarily, although their repugnance to it and to giving up their consuls had really been the main cause of the quarrel, the chief ground of the contention with him. These podestas were always foreigners; the nobles had the choice of them in the Terra Firma cities; and neither party could trust the important functions of the office to an adverse partisan connected with the place. The podesta both commanded the forces and presided over the distribution of justice; and he brought with him a body of his own followers to give his administration weight, as well as to provide for his own security. These arrangements were willingly submitted to by the people, because they found in them the only means of quelling the fury of the aristocratic factions, and securing the great object of a tolerable police. The choice of consuls had been much more in the hands of the people; the podestas were almost always named by the select body, the *credenza*. or the senate; substantially by the nobles. But they exercised their powers with vigour, and made examples of all who committed acts of violence, without regard to their station. Indeed their administration of justice was much of a military or dictatorial character. They were quite independent of both the people

and the nobles; whereas the consuls had always been more or less under the influence of their fellow-citizens. The podesta never scrupled to arrest a refractory noble, appeal for help to the body of the citizens as well as to his own followers, put to death any one committing treason against the community, and rase his fortified house or castle to the ground. The people willingly purchased, by a sacrifice of their own power, this relief from the outrages of the contending factions. Sometimes each party chose one podesta, and these two joined in choosing a single podesta. At Verona the two parties were the *Montecchi* (who were Ghibellines or imperial) and *Bonifazii*, sometimes called *Capelletti* (who were the papal or independent party), and they commonly joined in the choice of a podesta. The parties in most of the cities were denominated, as we have seen (Part 1. Ch. xviii.), either from some nickname, or from the leading family of each. At Verona the two families were the Montecchi and Bonifazii, and their memory has been preserved by our Shakspeare under the names of Montagu and Capulet. The same arrangement took place at Ferrara as at Verona, the Adelardi, who were Guelfs, joining with the Salinguerra, the Ghibellines, in the appointment. At Vicenza the parties of the Vivario and Vicenza families commonly joined in naming a *commissario*, and he chose the podesta; but at one time each party chose its own podesta.

It is needless to observe, however, that in many instances the violence and profligacy of the factions became an overmatch for the podesta's authority, though backed by the aid of the citizens at large. In Ferrara one quarrel of the two leading families about the marriage of an heiress kept the republic in a state of constant civil war for forty years, from 1180 to 1220. During that period the city was no less than ten times exposed to the proscriptions, the pillage, and the destruction of houses consequent upon each reverse that gave the victory to one or other of the factions.

In the two other Guelf towns, Vicenza and Padua, a temporary change took place soon after this time, and extended itself also to Verona, the chief Ghibelline town in the north-east of Italy. The fanatical preaching of the Franciscan and Dominican friars, whose order had recently been established, obtained them extraordinary influence with the multitude. They used this to

inveigh against a luxury which had really no existence, the manners and habits of all classes being of extreme simplicity; but the ascetic life which the monks and hermits practised made the most ordinary indulgences appear excessive. They did a far better service to humanity by opposing with their utmost zeal the bloodthirsty and turbulent habits of the rival factions and rival towns, and endeavouring to put down all private war. But their most favourite object was of a very different description, the establishment of inquisitorial tribunals, and associations for the extirpation of heresy by fire and sword. The zeal of the crusaders appears never to have taken this new direction. John of Vicenza, one of these Dominicans, distinguished himself chiefly by the more holy of these works—the preaching of peace. He obtained so great an influence, not only with the people, who had always hated the wars of the patrician factions, but even with the nobles themselves, that they took the oaths of peace which he presented; and the magistrates of the principal towns called upon him to reform their municipal statutes, in order to repress more effectually the outrages against which he had inveighed. Padua, then the most powerful of the commonwealths in the March of Treviso, Vicenza, Verona, Treviso, Belluno, all submitted to his legislation, as did also Mantua, Brescia, and Bologna, cities not in the March. Encouraged by his success, he convoked a general meeting of the inhabitants of the towns, to hear the blessed doctrines of peace preached. It was held in the plain of Pasquara, near Verona, and is said to have been attended by above 400,000 persons, who flocked to it under their prelates, nobles, and magistrates, from Bologna on the south, to Aequileia on the north of the Adriatic. Moved by his eloquence, and by the novelty of being thus addressed with scriptural texts, and vehement exhortations by learned men,*

* The remains which have been preserved to us of the sermons that produced such marvellous effects are mere strings of texts, accompanied by the most homely remarks in no great number. The language chiefly used was Latin, which the people generally understood, though they could not speak it. Frequently the preacher made his commentary also in the mother tongue, then beginning to acquire form and symmetry. The usual operation of a vehement manner must have combined with the as ordinary influence of a numerous crowd to produce the effects which all the authorities ascribe to the exertions of those preachers, not only in leading multitudes, but inducing men of all ranks to obey their injunctions, making most governments submit to their arbitration, and leading barons to quit the world for the hermitage, and even princes to seek the cloister.

the assembled thousands entered into the pacification which he enjoined, under threat of the heaviest curses; and the families of D'Este and Romano, the leaders of the most turbulent of the factions, ratified the treaty by a marriage which he dictated. Whether it was that the success of this assembly filled the preacher with an ambition of the more ordinary kind, or that his real views had always partaken of the secular nature, and that he now found the moment opportune for realizing them, certain it is that he who hitherto had confined himself exclusively to his holy ministry, all at once assumed the attitude of a temporal chief; and after spreading abroad the fame of many miracles which he pretended to have wrought, he obtained the ready assent of the municipal council, first of Vicenza, and then of Verona, to the assumption of supreme power, as duke and count, in their commonwealths. The multitude in both towns manifestly overpowered the patricians, both hurried on by the influence which he had acquired over them, and seduced by his promises to curb the aristocracy, and distribute the offices and powers of the community more equally. He made many new laws, which gave little satisfaction; he, however, checked the barons by obtaining hostages for their pacific conduct; and he garrisoned some of their castles with the public force. But his usurpation was attended with the most odious persecution. At Verona he condemned many persons for heresy, and caused sixty, all members of the first families, to be publicly burnt. Meanwhile another monk, Jordan, a Benedictine, had obtained nearly as great power, and by similar means, at Padua, though he never assumed the title of sovereign. Excited by his remonstrances, the Paduans attacked Vicenza, liberated the inhabitants from the tyranny of John, and after taking him prisoner, only gave him up at the Pope's intercession, on his exiling himself, and taking refuge in his original obscurity at Bologna.

The flight of the monkish ruler restored the domination of the nobles at Vicenza, and brought back a still worse curse than Friar John had proved to Verona. Some years before, in 1225, the senate of that commonwealth, a body of eighty nobles, annually chosen by their own body, had been returned entirely under the influence of the Montecchi party, and the Guelphs had been driven away. Eccelino, or Ezzelino, da Romano, the Ghibelline leader,

prevailed on the senate to create for him the office of captain of the people, and under that title to appoint him podesta. At first he made no change in their institutions, but in a few years he was allowed to introduce an imperial garrison into the town as the most effectual means, it was represented, of maintaining the ruling faction and "keeping out" the Guelfs. He soon obtained the most absolute power in Verona. The other towns, though under the influence generally of some one powerful family, had not as yet given themselves hereditary princes. The government in each of them was really possessed by a few of the nobles, to whom the others were as submissive as they were tyrannical over the vassals on their estates, and over the common people in the towns. In those places where a single family possessed the chief influence this abject submission was shown towards its chief. But in all of these republics the intrigues and contentions of parties were uninterrupted, and the councils of the community were fluctuating and distracted. The Marquis D'Este had been made chief (*rettore*) of Vicenza; but, without consulting him, the Vicentines and Paduans joined in an attack on Verona. Ezzelino, at the head of the imperial troops, took Vicenza, and treated it like a town that had been stormed. The Paduans put D'Este at their head, and placed the government in the hands of sixteen nobles, who proved cowards and traitors, first flying to their castles, and then, on their return, delivering over the town to the Ghibellines. Ezzelino thus became sovereign under the Emperor of Padua and Vicenza, and introduced an imperial guard into those towns as he had done into Verona. He began by destroying the residence of every noble in the town who had opposed him; and one half the places or castles of Padua are said to have been rased by him to the ground.

It appears certain that Ezzelino exceeded, in the cruelty of his ferocious reign, all the atrocities of the other tyrants whose history has reached us, either in ancient or modern times. That he put none of his victims secretly to death, if it were true, which there never could be any means of ascertaining, would only show that his audacity and contempt of all men's feelings kept pace with the relentlessness of his savage nature. Murders were openly committed by his orders, sometimes by public execution, sometimes accompanied with torture, sometimes by

walling up the cells of his victims and leaving them to perish of hunger, and so near the street that the air was rent with their cries. His own nephew was among the number whom he destroyed, having first starved to death the young man's uncles, barons of Vado. His practice was to imprison, frequently to kill, the relations and friends of the parties on whom his vengeance was wreaked. Once he put to death the whole of a numerous family who had been his most devoted adherents, and their offence was that one of them had married a Guelf. When Padua was rescued from his gripe, he revenged himself upon all its inhabitants who happened to be in his army. These, to the number of 11,000, were dispersed in small bodies and massacred, only 200 having escaped. When at length he was overthrown, his prisons were found filled with many hundreds of victims of both sexes, and many children among them, whom the monster had caused to be blinded and otherwise mutilated. His lieutenants, whether the podestas whom he appointed in the towns, or the officers whom he placed in the castles of the subject barons, were to the full as bloody-minded as himself, if they had less audacious courage. One of them put a whole audience of persons to death for having applauded some verses which he supposed contained a dark allusion to the tyrant. Nothing can be more disgraceful to human nature than the length of time during which this execrable fiend was suffered to outrage humanity. Full two-and-twenty years elapsed after the capture of Padua, when he perfidiously seized and imprisoned twenty of the noblest Paduans, as well as Friar Jordan, the favourite of the people, and began to pull down the castles of every one who fled from his cruelty; and during that long period nothing like an insurrection of the people, nor any conspiracy of the nobles, can be traced to have taken place. One attempt only was made to destroy him; and one to destroy a creature of his whom he had armed with his delegated tyranny, nature and education having already qualified him to represent his master. A noble prisoner, brought before Ygna, the podesta of Verona, rushed upon him and stabbed the wretch to the heart before the guards could cut his destroyer in pieces. This passage is said to have occasioned the Italian proverb, which purports that whoever sets no value on his own life is master of

the king's. It was a crusade preached by the pope against the common scourge that finally raised a sufficient force to destroy him; and the singular courage and capacity of the man made the event for some time doubtful, the first symptom of defection from him that he ever experienced having been on the morning of the day he received the wound, of which, being taken prisoner, he refused to be cured, and died fiercely and fearlessly as he had lived.

All the commonwealths which Ezzelino had enslaved now recovered their liberty, but only to lose it some years later, though to less oppressive masters. Verona made Martino della Scala podesta, and thus laid the foundation of that principality. Vicenza placed herself again under the senate of Padua, which appointed her podesta, and also their own. Padua retained her constitution much longer, and it was always more or less popular during the remaining part of the thirteenth and a portion of the fourteenth century. The government was indeed at different times almost purely democratic, when the people so far prevailed over the nobles as to vest the whole administration in the companies of artisans. At the head of these were popular tribunes, called *Gastaldioni*. The senate itself then became a popular body, for it was composed of citizens to the number of one thousand, elected yearly. The nobles, even those most eminent for their talents, were without discrimination excluded absolutely from all places of power or trust. Yet, with an inconsistency of which, except in the Italian republics, there are no examples, the people had no jealousy of the most powerful and ambitious family of all the nobles; they had recourse to the Carraras as leaders against the rest of the patricians, and gave them a preponderance which enabled them, early in the fourteenth century, to possess themselves of the supreme direction of affairs. Nothing could exceed the levity and uncertainty of the Paduan councils as long as this democratic influence prevailed. Vicenza threw off their yoke; sought the protection of Canè della Scala (the patron whom Dante has celebrated as affording him refuge when banished from Florence), and, preferring the rule of an absolute prince to the tyranny of their Paduan neighbours, had vested in him the uncontrolled government of their state, and soon found him taking the usual precautions against

their fickleness, by introducing a foreign garrison, and maintaining body-guards.

The Paduan democracy fluctuated between its hatred of Canè della Scala and its fears of the emperor Henry VII., then engaged in an expedition to recover the imperial authority in Italy. When they had resolved to resist the emperor they immediately took fright, and endeavoured to obtain peace. For this they had to pay in the harshness of its conditions. They then violated these, and recommenced the war. Against Della Scala they raised the largest army that had in modern times been seen in Italy—10,000 horse and 40,000 foot—but it remained inactive, and gained no advantage, when a pestilent disease, to which its ill-chosen position subjected it, rendered the whole design abortive. It was always remarked that when the errors, inconsistencies, and incapacity of the popular government had brought the state within a hair's breadth of destruction, the nobles were looked to as the only resource, and generally interfered with effect. Their party having obtained once more the superiority, the people turned their eyes towards the Carraras, who in 1314 headed a sedition against the ruling body, at the head of which were two wealthy men, self-raised to power from being citizens, yet supporting the exclusive or aristocratic policy. The old popular government was thus restored by the general assembly of the inhabitants. The administration of affairs was vested in eighteen senators (called *anziani*); these were to be assisted by tribunes (*gastaldioni*), and a foreigner was chosen podesta. The affairs of the commonwealth, however, prospered no better than before; and an attempt to regain Vicenza was defeated with great loss. Della Scala threatened reprisals, and seemed prepared to besiege Padua; and Jacob Carrara, whom he had made prisoner in the unsuccessful attack of the Paduans, having gained his confidence, is supposed to have obtained for his country the favourable terms of the peace which was made, and no sooner made than broken by the restless government of Padua. Canè then attacked Padua in good earnest, but spared all the Carrara estates; notwithstanding which, and the other manifestations of the secret understanding that prevailed between himself and that family, it continued as popular as ever, had exclusive possession of all the places of trust; and its partisans, taking advantage of the desperate state of public affairs, assembled the senate

and magistrates, and easily carried a resolution abolishing the democratic constitution and restoring the government in Carrara and his family. This happened in 1318. Four years after they found themselves unable to support their independence against the power and genius of Canè della Scala, who added Padua to his other principalities of Verona, Vicenza, Ferrara, and Treviso, and retained Carrara as his lieutenant in Padua. But the successors of Canè soon lost the power which his great capacity and good fortune had enabled him to acquire, and a league formed against them by Florence, Venice, and other republics, alarmed by the universal encroachments of the family, terminated in their losing the greater part of their principalities. At Padua, the Carraras, heading the Guelf party, regained their authority, which they retained (with an interval of two years, when Visconti seized upon it) till, at the beginning of the fifteenth century, they were conquered, as we have seen, by Venice, which had obtained previously no other part on the mainland, except Treviso, ceded on the peace dictated by the allies to Della Scala in 1348.*

John Galeaz Visconti (the first Duke of Milan) overthrew the remains of the Della Scalas, and succeeded to the principality both of Verona and Vicenza. Though the league formed against him succeeded in recovering Padua, which he had also taken, he retained his other possessions; and it was only during the minority of his sons, and the blood-thirsty and feeble regency of his widow, that Verona was taken by Carrara, and became subject to his government, and that Vicenza was given up to Venice as the price of her joining the regent against Carrara.

The effects of the democratic government at Padua in distracting the councils of the community, and supporting perpetual factious contests, have been already noted; the same consequences were produced in the less important commonwealths of Verona and Vicenza. In all the three states, too, there was the same disregard of liberty on the part of the people, the same disposition to give themselves masters, so as they might only insure a triumph over some adverse party. At

* In 1381, being attacked by Carrara, and unable to defend it, they sold Treviso to Leopold of Austria, from whom Carrara bought it soon after; and it came to Venice with the rest of Carrara's possessions in 1406.

Vicenza the domination, first of the Scalas, then of the Viscontis, was welcomed, as the means of avoiding a union with Padua under the mild rule of the Carraras, both from the natural antipathy to the Paduans and from the Ghibelline hatred of the Guelfs. When the Viscontis had, by the unexpected restoration of Carrara at Padua, for a short time been overthrown at Verona also, and the burghers would have re-established the republican government, the populace insisted on taking back the representative of the Scala family, a child of six years old, and restoring its absolute sovereignty, without any condition or limitation. Francis Carrara himself was rescued at Padua without the least attempt at reviving the popular government, though circumstances gave the citizens the power of making whatever terms they chose. So when his father abdicated three years before, the forms of the old popular government were gone through, and the people stood by as passive spectators of a show. They were assembled in the old hall, where the former meetings had been held before the beginning of the century; four senators, a gonfaloniere, and a mayor (*syndaco*) were appointed: into their hands the sovereignty was resigned, and they transferred it to the prince's son, without a moment's deliberation, the people taking no more part than if there never had been a commonwealth in Padua.

It is generally said that such was the effect of a tyrannical government, at least of an absolute monarchy, which had for many years been founded upon the ruins of the republican or aristocratic constitution. But this will not account for the entire disregard of popular rights, and the proneness to choose a single master, which, long before the downfall of the Viscontis at Verona, the abdication of the elder Carrara at Padua, and the submission to the Scalas at Vicenza, had marked the conduct of those republics. Seventy years before the abdication, and one hundred and twenty-eight before the downfall, the same indications had appeared on the part of the people, and the same conduct had been held by them. The misgovernment of the nobles, the maladministration of the popular bodies, above all the contests of the factions, were the real causes of the utter indifference with which the people had come to regard the changes in the dynasty, or rather of the inclination which they showed to have rulers who should give them some chance of

escaping from the miseries they had so long and so largely endured. No one can suppose that, with their active and intelligent nature, the Italians had ceased to take an interest in the management of public affairs. Even if the habits had not been formed, of mingling with every movement of the state as it were a private and individual concern, they were very sure to have interested themselves in whatever was passing, but much more when, for a long course of years, they had been constantly appealed to, sometimes for their active co-operation, always for their countenance and acclamation, by whatever power was exerting itself in each community. But then this state of things had been attended with most serious consequences to every member of society, not even excepting the humbler classes, over whose heads, in all other modern states, the storms of civil discord are wont to sweep innocuous.

For the conflict of parties in an Italian commonwealth, and of different towns or commonwealths with one another, was not carried on by one class only of the community, but engaged every description of the people. When the great bell tolled to intimate either that there was a revolt, and the magistrates must be supported, or that there was an invasion, and the citizens must defend their country, all were bound to join the standard of their quarter; no delay was allowed, nor was any excuse accepted. A candle was sometimes lit under the gate, and before it burnt into the socket the citizens must be armed and in the field, and before the tolling of the bell had ceased.

The only troops, however, on whom reliance was placed were the heavy-armed cavalry; and the practice had become universal at the beginning of the fourteenth century to have these composed wholly of foreigners. Before the end of the century it had been found that an ample supply of such hired troops might be obtained in Italy; and, accordingly, there were captains everywhere, who made it their calling to raise and train bands whom they hired out indiscriminately to all states and all factions. These *condottieri* also introduced another practice: the campaigns they carried on were marked with little bloodshed for the soldier, but, in compensation for this, the citizens and the peasantry bore the brunt of the war, and their indiscriminate pillage, as it was the great aim of the military movement, so it was the unfailing consequence of its result.

The economy of every state was arranged with a view to the operations of this predatory warfare. The country was not studded with houses, or barns, or buildings of any kind; all the peasants lived in villages, walled and fortified, and protected by the castle of the baron or his lieutenant. On the first alarm, all the cattle, and stores and implements, and moveable property of every description, were removed within the shelter of the castle. To overpower the whole country, scores of such places must be taken. There were in the Florentine territory three or four hundred such fortified villages or single castles. Hence the invading army much more frequently rested satisfied with committing as much havoc as it could in the deserted country, and taking as many of the castles as it could overpower by a sudden and unexpected movement. The instant that the place surrendered, every enormity was practised, as a matter of right and of course, upon the persons of the wretched inhabitants to whom it had afforded a shelter, and upon their property, which was given up to indiscriminate and unrestrained pillage.

It is not to be wondered at that the people grew tired of contests which the nobility thus carried on for its own benefit, and at their cost. But it is certain that the remedy was a most ineffectual one to which they had recourse, that of giving up the government to the arbitrary disposal of a single chief; and there were as many wars and as much suffering under the petty tyrants, as under either the aristocracy or the democratic rulers whom they superseded.

Nor must we omit to mark the benefits which resulted from popular constitutions, with all their serious evils, and the mischiefs which accompanied the establishment of absolute princes. We have seen how ill the affairs of Padua were administered by the democratic government. Yet during the usurpation and tyranny of Ezzelino the whole industry and commerce of the state was, as it were, suspended; and the half century which followed his downfall, though distinguished by constant errors and mismanagement of the public concerns, so that neighbouring powers could hardly tell in what the Paduan government consisted, was yet still more marked by the great and general progression of the people in every branch of industry, and in the acquisition of all kinds of wealth. The erection of a court in every city, with all its attendants of oppression, flattery, false-

hood, and subserviency, would have been a high price to pay for even the precious benefit of freedom from factious contention and intrigue; but these were not extirpated, they only changed their course and their complexion. We have already had occasion to explain the evils of petty principalities (Part I., Chapter XVIII.). It is impossible to rank among these any peculiar tendency to produce by far the worst vices which stain the character of Italian society in the middle ages, and especially in the fourteenth century—treachery and cruelty, the utter disregard of good faith, and of human life and suffering, which marks the conduct of all the wars and all the factious movements of the times. The hardness of heart produced by uncontrolled power, the corruption engendered by the unalterable smiles of fawning dependents, the callousness to all sense of shame induced by party connexion and party hostility, are quite sufficient to explain the worst practices of the period, and they belong to the aristocratic fully as much as to the princely times. Assassination itself, the most atrocious feature in the aspect of the age, can never be a more natural product of any soil than of that in which slavish obedience to a master always in sight affords boundless supply of ready tools, and a selfishness fostered from the cradle makes every rival be regarded not merely as an enemy, but a wrongdoer.

The constant agitation, however, in which these states were kept by their factions, their wars, and their rivalry with each other, both during the existence of their popular constitutions, and especially during the period which immediately succeeded under their first princes, had the effect of drawing forth genius, and promoting acquirements of every kind. The fourteenth century was distinguished from all that had preceded since the Augustan age, by its able statesmen and commanders, its cultivation of the fine arts, and the great works of architecture which it left, and which continue still the admiration of mankind. A more melancholy proof could hardly be given of the degree to which genius and activity may be perverted to useless, or even mischievous purposes, and of the possible disconnexion between the successful pursuit of the arts or of letters and the happiness of mankind. Succeeding ages have profited incalculably by the genius, the learning, and the taste which were awakened in those days; but the bulk of the people have

seldom been more miserable than the contemporaries of Dante and Petrarch, Giotto and Cimabue; while the great capacity of the Viscontis and the Scalas was the curse of their own age, and only benefited posterity by the patronage which men of letters obtained from their vanity, or from their policy of amusing the people whom they enslaved.

CHAPTER XXIV.

GOVERNMENT OF GENOA.

Early History—Pisan Alliances and Conquests—Constitution of 1096—Aristocracy—Parties of the Nobles—Podesta—Turbulence of the Factions—Constant Revolutions—Companies of Arts—Credenza—Oligarchy established—Abate—Capitano del Popolo—W. Bocanegra's Usurpation—Genoese Fickleness and Factions—Party movements and Civil conflicts—Visconti called in—Perpetual Revolutions—New Nobility; their Power; their Factions—Conflict with the old—Revolutions—French Conquests—Andrew Doria—Spanish Conquest—Doria's noble Conduct and Reforms—Final Aristocratic Constitution—Attempts to extinguish Party—Alberghini—New Factions—Councils—Doge—Syndics—Inquisitors—Judicial Administration—Galling yoke of the Aristocracy—Folly of the new Nobles and Plebeians—Oligarchical periods—Comparison of Genoese and Venetian Governments—Oligarchy of Genoese settlements.

ALTHOUGH the Genoese were not, like the Venetians, entirely separated from the Gothic, Lombard, and French monarchies, they were nevertheless much less connected with, and dependent upon, those conquerors than any other inland people in the north of Italy. This exemption they owed partly to their situation, which was protected by the Apennines towards the land, and by the sea on the other side; but they owed it in great part also to their poverty. Until the ninth century, when they had made considerable progress in commerce, they displayed little to invite a conqueror; their land and their waters were equally unproductive; and their magnificent harbour was really the only advantage which they could be said to derive from nature. Hence when the Lombards took possession of Genoa, they did not use much pains to maintain a strict dominion over it; and though it was formed into a county by Charlemagne, and conferred by Pepin upon his kinsman Ademar's family, who thus held it for about a century, it asserted its independence upon the fall of the Carolingian monarchy, deposed the counts, and formed a republican government, upon the model which was followed by most of the Italian commonwealths in the dark ages. About the middle of the tenth century it had been taken and pillaged by

the Saracens; but had soon expelled them, and taken revenge, by joining with Pisa in an attack upon their colony of Sardinia, the sovereignty of which was given to the Pisans by the terms of their treaty of offensive alliance, the Genoese reserving the whole of the booty resulting from the combined operations. The possession of the island, however, was subsequently a bone of contention between the two states, and the Genoese frequently had a footing in it. Of Corsica they became possessed at the beginning of the eleventh century, and retained it till the latter part of the eighteenth, when it was given up to France.

The constitution adopted in 1096 vested the supreme power in a senate of nobles, or rather in consuls chosen by and out of the senate; for the senate appears to have been a council of these magistrates, and, if we may judge by the rare mention of it in early Genoese histories, a council of no great authority. The number of the consuls varied from four to six, and they were at first chosen for three or four years; but in 1122 the office was made annual; and soon after they were divided into two classes, the one class having only the functions of supreme judges. When this division took place, the number of the consuls was increased; for those who had the political authority continued to be sometimes four and sometimes six in number. They exercised very extensive powers, having the whole executive government in their hands, unless when, upon important occasions, they assembled the people in a General Assembly or Parliament. They commanded the forces, superintended the execution of the laws, corresponded with foreign powers, and managed the expenditure of the revenues, rendering an account of their disbursements to the general assembly when they quitted office. The care of making alterations in the laws devolved upon commissioners especially appointed for the purpose, and called *correctors* (*correctori*), twelve or fifteen in number, and lawyers by profession; but their office appears to have consisted mainly in adopting and applying the principles of the Roman law. Any constitutional changes were the work of the consuls and the people, influenced no doubt by the lawyers, who always had much weight, and always leant towards the arbitrary doctrines of the Roman imperial code. The judicial consuls were chosen by the seven companies (some accounts represent them as six, some as eight) into which the commoners were divided, and each ad-

ministered justice to the body that appointed him. Each of the six quarters of the town chose likewise an officer called *captain*, who was considered as bound to protect the commons of the quarter like a tribune; for the jealousy of the nobles began to operate at a very early period, and not without cause.

From the earliest time, the senators, the consuls, and all functionaries of any importance, were taken from the nobles; and their ambition produced its wonted effects: they formed parties under the more powerful families, each desiring to obtain the undivided power by engrossing all offices, and especially by exclusively holding the consulships. The earliest division of this sort which is recorded was that of the *arogadi* and *castri* (or *castelli*), which went so far that the consuls were obliged to interfere, and allow them a time and place for terminating their differences by arms. When, however, the hostile meeting was to have taken place, the archbishop, with the aid of the magistrates and the urgent entreaties of the people, prevailed upon the partisans to lay aside their animosity and swear to keep the peace. A government so feeble as against the nobles and their parties could manifestly not expect that such a pacification would long endure. Accordingly the history of Genoa for ages presents a constant succession of violent scenes, from the outrages of the noble families and their adherents in their struggles for power, and their mutual efforts to gratify their revenge. The feature which all these conflicts present of the successful party not only driving their adversaries from the country, but rasing their houses to the ground, indicates that each noble had fortified his mansion, and that the civic nobility, if they had fewer retainers than the feudal barons in the country districts, had as many castles.

At the time when the singular pacification was effected to which we have referred, the republic had been for about fifty years continually engaged in wars with the Pisans and the Barbary Corsairs. A universal relaxation had been the result, from the attention and the exertions of the government being so constantly directed to the foreign service of the state. The magistrates had no longer any authority; the multitude was turbulent and rebellious; all police was at an end; disbanded soldiers in troops robbed upon every highway. The senate, as a last resource, sent for three hundred regular troops to perform

the duties of policemen, and appointed three commissioners to bring malefactors to trial and punish them summarily. The severe examples which they made had the effect of restoring obedience to the laws ; but the nobles and their adherents continued to set all law at defiance in their mutual contentions. About this period the intolerable evils of such a state of things gave rise to the substitution of a podesta for the consuls, he being a foreigner, chosen for a year, and almost always a man of rank and of some influence in his own country ; he was attended by two lawyers and by two gentlemen of the degree of knights, whom he brought with him. The principal advantage, however, in Genoa, as elsewhere, which the people derived from this magistrate, as compared with the native consuls,* was his having no party or family connexion, and being chosen only for a year, and without the possibility of acquiring such influence as to make him, or any one else, ever think of extending his power or the tenure of his office. He was not only the chief criminal judge, but the commander of the forces. A very few years only elapsed before parties of the nobles began their attempts to restore the consulship, in order that they might have an opportunity of obtaining the chief power, and overturning the popular constitution. Thus consuls were restored in 1182. Then the contending parties were marshalled under the *Cortes* and *Voltas* : the former had such influence in the senate as to choose three consuls of their own house, and the latter flew to arms. Both these families fortified their houses, and carried on war openly in the streets of Genoa ; nor could anything quell the civil broils which were thus excited, but the war with Henry IV., in which the republic was soon after engaged. In the course of the next year the office of podesta was revived.

It appears that the Genoese nobles early arranged themselves into companies as the artisans did in other towns. Of these companies there were generally eight, each of which chose one councillor and a member of the credenza, whose office continued for a year. Its office was to assist, and of course to control, the podesta in his executive functions, and to superintend the revenue and expenditure of the state. This council was the only body which possessed any real power ; the popular assembly

* When mention is made of the consular office being abolished, the political and not the judicial consuls are alone meant. The latter (*consoli dei placiti*) were always retained.

was only convoked occasionally, and never except by the executive government, seldom by that, unless in some pressing emergency of public affairs; but the council was always in operation. The eight companies appear to have excluded all the families which had not been originally enrolled in one or other of them. Hence an oligarchy was in reality established, and the result took place which we have always observed in such cases; the excluded nobles could not brook the monopoly of their brethren and peers, and were disposed to take part with the commoners in attacking them. Several attempts were made without success to destroy the oligarchical system; and in 1227 a formidable conspiracy formed with this design failed. The select body being of the Guelf party, the Ghibellines aided their brethren, who were the excluded part of the aristocracy, and the civil war of parties was complicated with the less pernicious malady of foreign invasion. But the Guelf and the oligarch prevailed. It must be added, however, that the people had always an officer, called the *abate*, to watch over their rights and interests; he had a kind of tribunitian power, and was elected by themselves. The origin of his office was the usurpation of Doria and Spinola as captains of liberty in 1270. To gratify the plebeian party and keep them quiet, they gave them this functionary. At length the people were induced to take an active part against the oligarchy. The excluded nobles prevailed on them to rise, and one of that class, William Boccanegro, who had played the part of a demagogue against his own order, was, in the heat of the sedition, chosen captain or podesta of the people (*capitano del popolo*), a new office, and which at a later period proved destructive of all liberty in other republics, as we have already seen. They gave him, however, a council of thirty-two *anziani*, or senators, four from each company; and if these were taken from the company of nobles, and not from the commons in their eight quarters, the proceeding must be admitted to have been of a very moderate and judicious kind. However, whether the council thus appointed was of the select body or not, their proceedings were framed upon the plan of the whole revolution which had been effected, and were dictated by its spirit; for they immediately declared the captain's office to be for ten years, settled upon him a revenue of a thousand golden florins (equal to twice as many pounds of our money), gave him a body guard, beside an establishment of officers, and placed the

office of annual podesta at his disposal, that functionary's powers being now, in consequence of the captain's prerogative, reduced to those of chief civil and criminal judge.

Boccanegro soon began to grasp at still larger power ; to extend his salary, increase his guards, and govern without the least regard to his council. But he also excluded the nobles from all places of trust and authority, and this raised a conspiracy against him, in which the people deserted their champion to join with their adversaries. After having been five years in office he was driven from it, and the old government was restored. The oligarchy therefore was continued ; and among the families who had any real power, four only are to be named, the Dorias, Spinolas, Grimaldis, and Fieschis. All the companies could belong to the council and could choose their representative in that body ; but the families who alternately governed the republic were those four. The two former, being Guelf, generally were found combined, as were the two latter, being Ghibellines. But frequently one affected, and for a season obtained, supreme power, sometimes as captain of the people, sometimes as consul, and then the other would join the opposite faction ; and all on both sides would appeal to the people. On one occasion, 1291, by the consent of the party who held the office of captain, the government was changed ; that office, being made annual, was declared only tenable, like that of podesta, by a foreigner ; and a provision was added that equal numbers of nobles and plebeians should always be placed in the other offices. The changes, and factions, and civil dissensions of Genoa, the turbulence of the nobles, and the fickleness of the people during the thirteenth century became proverbial, and were regarded, even in Italy, as a thing wholly without example.

But the fourteenth century opened with a scene unprecedented even at Genoa, and to which we may safely defy the whole history of party to produce a match for its baseness and its folly, much as we have been accustomed to see party movements conducted on similar principles within the very narrow limits assigned to the enormities of modern faction. The Doria, or Spinola party, having gained the mastery over the Grimaldi and Fieschi, soon quarrelled about the sole possession of the prize—the supreme power. They went to war, and the Spinola had the advantage ; whereupon both the Grimaldi and Fieschi took part with the Doria ; and proving too strong for them, and after

their united efforts had defeated and banished the Spinola, the Doria, too, retired and left the field to the other two. The Doria and Spinola were thus, in consequence of their former joint success, in joint defeat and exile—for in the Italian party wars, defeat always involving military overthrow, implied the banishment of the survivors. Their common misfortune brought them again together, and they signalized their coalition by calling in foreign assistance, as did their successful antagonists: the one sending for Visconti, the other for the King of Naples, to whom, jointly with the Pope, the people were pleased to give the lordship of the republic for ten years; and the Visconti and see of Rome accordingly named them lieutenant-governors of Genoa as soon as the war was ended. This happened in 1331; and whether it be that a thirteen years' civil war, with foreign interference, had wholly exhausted the patience of the people—or that the Doria and Spinola parties, when exercising the office of joint captains, insisting to choose the abate, a plain usurpation upon the Commons, was a degree of tyranny not to be borne—or that a patrician faction inimical to the oligarchy was, as on the former occasion of the first captain's appointment, at the bottom of the movement—in 1338 a sedition was begun at Savona, where the nobles were all driven away, and two captains chosen, with a council of twenty mariners, and this sedition spread immediately to Genoa, where the multitude chose Simon Boccanegro, first as their abate; and when he objected that, his family being noble, he could not legally hold the tribunitian office, he was by acclamation created doge, with almost absolute power; and by his great decision and firmness, as well as the justice and moderation of his government, he appeared to justify this extraordinary proceeding.

But he had removed all the nobles from office, and that body soon began to plan his overthrow. It was not, however, till 1344 that they could bring together a force sufficient to defeat him. He at first agreed to such a change in the government as placed the whole power in the hands of a council, composed of half nobles and half commons. But he was then compelled to resign, and he removed to Pisa. A doge who united both patricians and plebeians in his favour was then chosen; but the Spinolas took arms and fortified themselves in the suburbs and on the hills, many of the people taking part with them. A sedition against the nobles again began at Savona, and again extended

itself to the capital. The doge, with the concurrence of the people, banished all the senators of noble family, and ordered a general disarming of the patricians by a search in all their houses. Both parties now agreed that all their differences should be submitted to the arbitration of Visconti, then lord of Milan; and he awarded that all the exiled nobles, with one or two exceptions, should be recalled.

Soon after this transaction the Genoese fleet sustained a general and nearly fatal defeat in Sardinia, in the war against the Pisans and Catalans. The courage of the people was completely cut down, and all the attempts of the Florentine allies to make them bear up against the blow were ineffectual. The whole community appeared utterly disheartened; and when the senate, calling together an assembly of the people, proposed to place the republic under the protection of Visconti, the measure was received with unanimous and hearty assent. Visconti readily accepted the office, dethroned the doge, and appointed a governor. The senate next year chose his nephew to succeed him; and the Viscontis having exasperated the nobles by their arbitrary proceedings, the people joined in restoring the former government, and Boccanegro was brought back as doge from the exile in which he had lived for fifteen years.

It would answer no good purpose to follow the dull, monotonous course of the Genoese revolutions, which generally ended in giving power to a foreign state; and always evinced, both in the conflicting factions of the patricians and in the unsparing and unprincipled hatred of the people towards the nobles, an utter disregard of all duty to the country, and a constant readiness to sacrifice at one time the liberties of the community, at another time its independent existence, for the poor satisfaction of gaining some triumph over an adversary, or exalting a friend at his expense; a degree of baseness hardly exceeded by those wretched beings who in other countries have been found capable of plunging their country into all the horrors of war that their hold of place might be made more secure, or their spleen be gratified by heaping difficulties upon the heads of their adversaries and successors.*

* One example, but not a solitary example of this worst enormity of faction, has been more than once referred to in this work, namely, the Spanish war in Walpole's time.

Nor was the profligate game of party played by the old nobility alone. The frequent expulsion of these nobles from office, sometimes even from the dominions of the republic, led the way to many wealthy families of the commons rising into importance. They filled offices of trust; they acquired influence in the management of public affairs; they were regarded as noble families; but they were considered as a new or inferior nobility; and their conflicts with the others were natural enough; but also they imitated these others in soon raising conflicts among themselves; and the Adorni and Fregosi families were as much distinguished for their contentions as the Dorias and the Grimaldis, the Spinolas and the Fieschis. In truth, the new nobles were originally the Natural Aristocracy; but as soon as they obtained a preponderance, they were bent upon excluding all other classes, both the old nobles and the common people. Hence from the time of Boccanegro being made doge, in the middle of the fourteenth century, the old nobles were excluded from all offices; but the plebeians were never chosen. The new nobles held every place exclusively, from that of doge downwards, excepting during the occasional changes which followed different attempts of the old nobles to establish a tyranny, when a compromise generally took place, and a council, sometimes of twelve, sometimes of twenty-four, was instituted, with the provision that one-half should be noble and one-half plebeian—that is, nobles of the new or plebeian houses.

When the supreme power was given up to the Duke of Milan, chiefly with the view of restraining the factions, the republican constitution was retained, a treaty being made which provided that half the magistrates should be taken from each order. In 1499 the French overran the duchy of Milan, and annexed it to their crown. Genoa was transferred with it as a kind of appanage, and under stipulations similar to those which had been made with Milan. The power of the Grand Duke had been effectual in keeping down the factions; he had, generally speaking, observed the conditions of the treaty, and had held the balance even between the conflicting orders. But when a French governor was substituted for a Milanese the case was widely different. All the leaning was towards the nobles, whose insolence broke out more intolerably than ever. Their contempt for the new families led to constant insults and breaches of the peace.

No redress was afforded by the courts of justice, because the order of the wrongdoers formed always one-half of the members, and took part against the injured party. The governor leant in the same direction. The nobles were even found to carry daggers with a motto indicating at once their bitter feeling towards the other class, and the use to which the instrument was destined—(*castiga vilani*) “chastise the plebeians.” This state of things became intolerable; and in 1507 a revolt was the consequence. The body of the people took part with the new nobles, and the result was that their terms were granted—the chief of which was that, as they outnumbered the old nobility two to one, one-third only of the magistracies, including the places in the council or senate, should be filled by the old nobility, and the remaining two-thirds by the other orders. The new nobles, however, immediately claimed the whole of this proportion for themselves, excluding the real commoners altogether. Hence these now revolted, claiming their share as against both classes of nobles. Although they were opposed by the new nobles, they completely defeated the old, and drove them from the country. The consequence was their obtaining the right to choose for themselves eight tribunes as guardians of their rights. The King of France (Louis XII.) confirmed all the concessions which both the new nobles and the commons had thus extorted from his lieutenant, but upon condition that the fiefs and castles of the Fieschi family which had been taken should be restored. The new nobles agreed to this; the commons strenuously opposed it, and further insisted upon measures being adopted for seizing Monaco, the fortress of the Grimaldis, and which had been by them made the shelter of pirates who infested those seas. The popular leaders, flattering themselves with the hope of obtaining assistance from Rome and from the Emperor, persuaded the people to refuse all accommodation with Louis, to throw off his authority, and to choose a doge. Left to themselves and panic-struck, they were entirely overthrown; the French king, beside putting the doge and many of the revolters to death, and levying heavy contributions on the city, burnt the charters and treaties containing its privileges, restored the former equal division of the magistracy between the two orders, and put an end to the appointment of popular tribunes.

In 1522 the Emperor, Charles V., succeeded in surprising the town, and it was subjected to the most cruel and unsparing pillage of which even Spanish troops are capable. But five years after, notwithstanding the heavy loss which the French had sustained at the fatal battle of Pavia, they were enabled, chiefly by the skill and courage of Andrew Doria, their most famous admiral, to regain possession of Genoa. This eminent person, how illustrious soever his name has become, was in truth a naval condottiero. He was a distinguished member of the great Doria family, but had early entered into the service of various foreign princes, and being possessed of several galleys, or ships of war, had latterly hired himself and them to Francis I., who was then engaged in his memorable war with Charles V. The term of Doria's service expired in 1528; and they who would find excuses for his conduct, which he never could himself even profess to approve or defend, have said that he refused to renew his engagements because France had broken faith with his country, and that he was resolved to restore her free constitution. But the fact is unquestioned that he had borne arms, if not against her, yet against the power which had become possessed of her territory; and that in this warfare he had reduced her by a blockade, that is, by endeavouring to starve her people, his fellow-citizens. The fact is equally unquestioned that this success restored her to the dominion of the very prince whose breach of faith with her is the alleged ground of quitting his service; nor did he, when thus instrumental in effecting the restoration, seek to impose any terms upon those whom he had made the conquerors of his native country. It might well have been expected, that the same desire to restore her liberties which is given as the ground of his proceedings in 1528, should have actuated his conduct in 1527. Again, it is not denied that, when he sent his envoy to announce his withdrawing from the French service, he not only gave the breach of faith as his ground of complaint, but the arrears of pay due to himself; and that, like a true condottiero, he put the payment of those arrears in the front of the conditions upon which he again tendered his services. The stipulation of an ample pay (60,000 florins a-year) was in like manner coupled with the restoration of the Genoese constitution in his offer to the emperor, who readily accepted the terms; and partly by Doria's fleet, partly by the co-operation of the Genoese them-

selves, the French were expelled and the Spaniards admitted, whose sacking of the city he had, during the whole course of the war while fighting against them, never forgiven, refusing to make any Spaniards prisoners of war, but sending all he took to the galleys.

Here ends the blameable or equivocal part of this great man's conduct. Nothing could be more truly noble and disinterested than all that followed. The constitution, with important amendments, was, under his auspices, restored. He refused all the offers of the emperor, who, averse to popular, even to aristocratic government, urged him to accept the principality into which he offered to erect Genoa for him; and when the office of doge was once more established, and all voices joined in beseeching him to accept it, he declined, recommending that it should no longer be conferred for life, but only for two years. He passed the rest of his days, prolonged to an extreme old age, among his countrymen, universally esteemed and beloved, and, in all the emergencies of their affairs, respectfully consulted. His liberal spirit, notwithstanding all his opportunities of amassing wealth, prevented him from leaving any considerable fortune; and so entirely did he hold himself to be at the service of the state, that he took the command of its fleet in one of its wars at the age of eighty-five, and was in his ninetieth year when he finally resigned the command of the Spanish navy.*

The constitution as it was now remodelled, with some material changes made in 1576, continued to govern the Genoese commonwealth, until it was finally subverted in 1799 by the French invasion. It was framed by twelve functionaries, styled Reformers of the Law (*Riformatori*), who had been appointed to suggest amendments of the law, and to effect a general reconciliation of the contending factions the year before, when the French, under Doria, obtained possession of the country. The French government had thrown no impediment in the way of their judicial labours, and the changes which they proposed in

* It may be observed that the reason he gave for refusing the dogeship was his wish to continue in the Spanish command, which he thought incompatible with that high office; and some may conceive that the old condottiero habit here again broke out. The cruel punishment of the Fieschi conspirators has also been laid to his charge; but the murder of his favourite nephew and heir, the intended murder of himself by that infamous gang, and the general habit of the age as to severe inflictions in such cases, must be taken as a great palliative of this guilt.

the constitution upon its restoration, were adopted by the Spanish government acting under Doria's advice when the French were succeeded by the emperor.

The fundamental provision by which the factions were to be united, and their conflicts terminated, consisted in abrogating the exclusion of the patrician or old noble party, opening all the offices and honours in the state to all alike, that is, to all the nobles, whether old of the year 1338, or new, and distributing the whole body, without distinction of title, name, or party, into twenty-eight *alberghi*; each family which had six houses occupied by its members, or adopted adherents, being reckoned an *albergo*. Among these twenty-eight all the others were distributed, so as to mingle Guelfs and Ghibellines, patrician and plebeian nobles, in the same albergo, and to sink their names in those of the family to which they were enrolled. Two names were wholly suppressed, those of the Adorni and Fregosi, whose contests had so bitterly divided the republic for the last hundred years. From very early times there had always been a practice among the noble houses of adopting others into their own circle, and making them, as it were, members of their own families. The object of this was evidently to increase the number of their adherents; and the resemblance of the system to that of the ancient *clientela* would at once present itself, were it not repulsed by the consideration that the adopted families were of distinction, and, though only of plebeian degree, yet of wealth sufficient to rank them with the adopting houses. The adopting family was termed *albergo*, the inn; and not only gave protection to the other, but communicated its name and as much of its privileges as the law permitted. It was upon this old practice that the Riformatori now built their strange plan of exterminating parties; and, as well might be expected, if it put an end to old, it gave rise, before long, to new divisions. The old parties might easily be abolished, because they were marshalled according to names and persons, the factions having no distinguishing principles, and not even pretending to adopt any, as their successors have often done in modern times to conceal their selfish and personal views, which formed the real bond of their union. Contention, and even civil war again broke out between the old and new nobles, while the people murmured at being excluded from all share in the government; and before half a century had

elapsed, the names of the alberghi were abolished, and each family resumed its own. The great council, too, or the chief senate, which in 1528 had been formed of the whole nobles in rotation, four hundred sitting each year, was now composed of all who had been inscribed in the *Libro d'Oro* (or Golden Book), and were twenty-two years old. The number of those families was about one hundred and seventy: but the senate had the power of adding ten yearly, seven from the city, three from the country, provided the heads were persons of a similar station and fortune to those of the nobles; a power which, of course, was rarely exercised, and then only by elevating elderly persons who had no children, and were not likely permanently to increase the numbers of the ruling body. They also added a number of persons in needy circumstances, who became mere dependents upon the wealthier class.

To this body belonged the choice of the lesser senate, or council of two hundred, the doge, the councillors of the signory, sometimes called also governors (*rettori*), and the *procurators* of the town (*procuratori di commune*). The governors were originally eight, and afterwards twelve. The procurators were equal in number, with the addition of those who had been doges, being those who had immediately before been governors. All these offices were held for two years, except that the doge became procurator for life, if no charge was proved against him upon quitting his office. He could not be re-elected doge for ten years, nor could the governors till after an interval of five. It thus happened that the members of the doge's council were partly in office for two years, partly for four, and partly for life. The doge's election was complicated, as at Venice, though much less so: that of the governors was by thirty electors, whom the great council appointed, and who selected one hundred and twenty names, from which twelve were taken by lot.

The government was in the hands of the lesser council, and the doge's council, sometimes called the *Signoria*, though the *Signoria*, properly speaking, formed only a part of it. The great council could alone levy new taxes, or make any fundamental changes in the constitution; but it was only called together by the *Signoria* on extraordinary emergencies, the lesser council having the power of making peace and war, and even of making laws, provided they did not alter the constitution of 1576, and

were agreed to by two-thirds of the voices. Inferior magistrates were also chosen by this body; and where the senate is mentioned, we may in general assume the lesser council or lesser senate to be meant. The Signoria, or doge's council, possessed all the other powers of the executive government, conducting foreign affairs, receiving ambassadors, superintending the execution of the laws, providing for the peace of the country, and managing all its financial, and all its military and naval concerns.

The power of the doge was even less than that of his brother at Venice, if less can well be imagined. He had no patronage at all, and was watched by two governors, who were obliged to live with him in his palace. He had, however, a body-guard; and before the surrender of Corsica, he wore a crown and carried a sceptre. His representation was somewhat greater than that of the Venetian phantom; but he was only addressed by the somewhat homely title of "*Messire Doge*," though by a kind of mockery he was called "*Most serene and illustrious Prince*." Like the doge at Venice, he presided in all councils, and in all had a double or casting vote—a privilege of very little value in bodies so numerous and so constituted. Eight days were allowed after his office expired for bringing any charges against him; and, like all other magistrates, he was subject to the inquiry of the *censors* or *syndics*. These officers were appointed for four years, and were five in number: beside the functions just mentioned, and in which they resembled the Athenian *censors* (*logistæ*), their duty was to watch generally over all violations of the law, and especially of the constitution. It was a tribute of respect to Doria that he alone was made censor for life. There were seven Inquisitors of State, whose duties were nearly the same as those of the Venetian inquisitors, but who had not the same absolute power: they exercised a vigilant superintendence, even by spies in families, but could only act through the courts of justice, or, in extraordinary cases, through the signory.*

The administration of criminal justice was committed to the podesta, or foreigner, as we have seen: in 1576 there was added

* There was a practice at Genoa of erecting a tablet in some conspicuous place to record the crimes of doges. Two singular remains of this are still to be seen in one of the principal streets of that city. The expressions employed to describe these magistrates are sufficiently plain and homely. One is called, among many other terms of vituperation, "*Fur magnus*," and the other "*Latronum maximus*."

the criminal rota of four foreign judges; civil justice was administered also by foreigners, but of inferior rank, being doctors of law, in general taken from the Italian universities. From all these courts an appeal lay to the General Assembly, a body composed of the signory and one hundred members of the great council.

The only offices which were allowed to be filled by the commons were those of the three secretaries of state: they were lucrative, could be held for ten years, and sometimes were continued further; and were understood to give those who had held them a title to be enrolled among the nobles.

That we may be able to understand how galling to the commons this exclusion must have proved, we have only to reflect, first, on the equality which the law and the habits of the country seemed to encourage by all ranks alike taking part in every kind of mercantile occupation, whether of manufactures or of foreign commerce; next, on the circumstance that many families of the excluded class possessed ample wealth, high ecclesiastical preferment, even feudal property, and, in virtue of their fiefs, titles of nobility. The patricians, whether of the old or new nobility, affected a superiority over those distinguished families even more intolerable than the mere possession of exclusive privileges and power; and the insolence and the privileges of the poorer nobles created after Doria's revolution were, on account of their poverty, more hard to bear by the respectable and wealthy plebeian families, who in all other respects were so greatly their superiors. Then these were not wise enough to disregard this conduct, or to pursue their own course without aping the habits of those who thus affected to despise them. They could afford to display the same magnificence with the wealthiest of the patricians; but with that they were not satisfied. Many of them must needs appear always armed and in military garb, attended with bravocs ready to execute any unlawful order, and even to assassinate those who were supposed to have given them offence. Such were reckoned the distinguishing marks of nobility in the sixteenth and seventeenth centuries. The nobles, however, kept those imitators at a distance, and mortified them and their families by a supercilious demeanour to which the folly of the plebeians and their want of proper pride lent its only sting. Sedi-

tions and conspiracies were the consequence ; but no success attended them, and the government remained aristocratic, almost oligarchical, as before. Strictly speaking, the oligarchy had only existed in the earliest periods, when the old nobles excluded the new, and afterwards when the new excluded the old from all share of direct power. In the most rigorous sense, of the partial preference and general disqualification by law, it perhaps only existed from 1298 to 1319. But if the distinguished plebeian families holding feudal titles be regarded as nobles, the oligarchy continued during the remaining two centuries and a half of the republic's existence.

With respect to the bulk of the people, it may seem at first sight that the Venetian constitution, as administered by the nobles, gave them less consideration than they enjoyed in the more turbulent republic of Genoa. There the constant factious dissensions rendered appeals to them frequent ; while at Venice the vigour of the government, repressing all or almost all party, confined the intrigues of the chiefs to the body of the nobles exclusively. The people, however, appear to have been in both republics treated with forbearance, exposed to few vexations by taxes, and seldom made the subject of direct oppression. The aristocracy of Genoa was not indeed so great a favourite with them as that of Venice : but it was patiently and even cheerfully submitted to, though, in all the more essential qualities of good government, the inferiority of Genoa was sufficiently remarkable. The rulers had no power of checking the disorders constantly produced by the factious nobles ; the police generally was very defective ; the great interests of the state were repeatedly sacrificed to those of the ruling class ; their contentions, beside filling the city with slaughter, paralysed all the efforts which could be made by the national force, distracted every negotiation, and delivered up the country successively to Milan, to France, and to Spain. But nothing was done to outrage the feelings of the common people ; and all experience shows that they regard insult far more than injury, nay, that they have more frequently risen against their rulers because of some act which was calculated to excite indignation in bystanders, and in which themselves were but remotely concerned, than because of an act, or even any course of misgovernment, by which their most important

interests were sacrificed. Thus it will always be, until they have learnt well their duties and their rights, and can distinguish between things that only offend and things that seriously hurt them.

The aristocratic government of Genoa extended to her foreign possessions; and however much the nobles at home were resolved to preserve equality of privileges among themselves, in some of those settlements an oligarchy was completely established. The great island of Chio was entirely governed by nine families, or rather branches, of the Justinianis, who excluded all others from a share in the administration from the middle of the fifteenth century.

CHAPTER XXV.

ITALIAN GOVERNMENTS—MILAN.

Consuls—Podestas—Credenza—Patricians—Plebeians—Struggles of the Orders—Cavalry—Condottieri—Foreign Captain-General—Financial Dictatorship—Companies; Credenza; Molta—Councils—Defects of History in Political Matters—Signor del Popolo—Martino della Torre—Visconti completes his usurpation—Unprincipled Conduct of both Patricians and Plebeians—Unfitness of the Lombards for Self-Government—Conflict of Factions—Succession of Revolutions—Visconti Family—Vain attempt to erect Republic—Francis Sforza—His Victories, and elevation by the Mob—Fickleness and baseness of the People at Milan and Placentia—Charles V. obtains the Sovereignty after the Sforzas.

THE most important republic founded on the mainland of Italy was that of Milan; and it had taken the lead, as we have seen, in the struggle which lasted for so many years with the emperor, having been the chief town of the great league. When the peace of Constance established the independence of the towns, although the principal point in dispute had been the refusal to give up their consuls, and be ruled by podestas of the emperor's nomination, the Milanese, like most of the others, were satisfied to have podestas; and Frederick allowed them to choose their own. The war of the league had kept down the hostile spirit of the patricians and plebeians: but the mutual animosity of the two bodies revived with the peace; and it is probable that the latter were willing to have the chief military and judicial power, an authority almost of a dictatorial nature, intrusted to one who could not belong to the party of the nobles; for, though a noble by rank, he was always a foreigner, whereas the consuls were Milanese. He was only chosen, like the consuls, for a year. These consuls, originally only two in number, were now twelve, and had no longer any military command or judicial authority, except that some of them acted as justices of the peace. They formed the executive council or *credenza*, and had the patronage of all offices and the direction of the finances, being classed in bodies as consuls of justice and of finance. Al-

though the nobles and plebcians always chose them from among the nobles, these were anxious to avoid the party election, and insisted on the consuls choosing their successors, which would have established a regular oligarchy. But the people would not agree to this, and obtained a law which gave the consular election to a body of one hundred of the trades or artisans chosen at the general council or assembly of eight hundred, but with the condition that nobles only should be eligible. It, however, frequently happened that the consuls (or *credenza*) of one year were allowed to name their successors without any election. At the head of this aristocratic republic was the archbishop, representing the emperor; but only nominally at its head. The coinage was under his authority, and justice was administered in his name; but he in no way interfered with the *podesta*, who alone exercised judicial functions.

For many years the constant struggle carried on between the two orders related to the appointment of the various officers in the state. Sometimes matters came to an open rupture, and in 1221, when the nobles were overpowered and driven from the town, they fortified themselves in their castles, and being pursued thither, many were besieged, and their buildings razed to the ground. A general submission was the consequence. But again the nobles appear to have gotten the upper hand, and to have had exclusive possession of all places, civil, military, and ecclesiastical. A new war against them was the result; and by the peace of Ambrogio it was provided that all offices, from the highest to the lowest, should be divided between the nobles and the commons. It is probable that no distinction was ever made between the feudal nobility and those who had been raised to distinction in the towns, and had no strongholds in the adjoining districts, but had acquired wealth and importance from commerce. As always happens in such cases, they were sure to take part with the remains of the ancient nobility in any contest with the commonalty. Whensoever conflicts took place beyond the precincts of the town, the nobles being generally mounted as well as their vassals, in an age when the cavalry decided the fate of every battle, they almost always had the advantage; but in the towns, the people could always defeat them by barricading the streets, and by attacking from the houses.

About the middle of the thirteenth century, however, a great change took place in the mode of conducting hostilities; and this change was productive of very important consequences to the parties which divided Milan, as well as those of all the other commonwealths. A class of men, as we have seen (Part II., Chap. XXIV.), had arisen, formed by the perpetual wars everywhere waged; they devoted themselves to military pursuits, and were banded together under captains who made a profession of hiring out their services indiscriminately to all who would pay them. In the rare case of peace, or of any other event which threw them out of employment, the chiefs were not perhaps always captains of banditti; but their followers were universally of that description, and the numberless robbers who haunted all the forests of Germany and Italy furnished the greater part of the troops serving under those hirelings or condottieri. The towns which had hitherto been unable to send any available forces, that is, any heavy cavalry, into the field without the aid of their nobles, could now hire troops to carry on their wars with each other; and they sometimes engaged a neighbouring prince, as well as a mere condottiero, to serve them in this capacity. Indeed the chances were that the prince had originally raised himself to power by following that profession. The Milanese, when carrying on war with Pavia in 1253, made a treaty with Lancia, marquess of Montferrat, by which he was to be their captain-general and podesta for three years; and so much more did they regard their quarrel with Pavia than the party to which they belonged, that they thus gave the chief power in their commonwealth to a Ghibelline, though the commoners of Milan were of the Guelf party. He was allowed to act by a deputy in administering justice, residing himself at Montferrat, and commanding the forces. The nobles, who belonged to the Ghibelline party, could not fail to derive much influence from this singular arrangement. About the same time their finances having become so deranged that they were compelled to suspend the payment of the public creditor, only liquidating their debts by instalments in eight years, to provide the sums required a singular expedient was resorted to. A Bolognese, called Gozzadini, was appointed financial dictator, being vested for four years with the power of levying whatever taxes he deemed necessary,

and in whatever manner. In order to extend his authority further, he was made podesta during the last year of his office.* The oppression of his schemes raised a revolt, in which he was assassinated by the mob; a sufficient proof that his imposts were of a kind to spare the upper classes. The greater part of them were however continued.† Another act of nearly equal folly was committed by the popular government, and about the same time. To show their respect for the pope, Innocent the Fourth, who visited Milan in 1251, and prove themselves devoted Guelfs, they allowed him to name the podesta for next year; yet this was but two years before they chose Lancia, a noted Ghibelline, for their chief.

The numbers of which the noble families were composed, and who always acted in concert, gave them a weight which the commons did not possess. To counterbalance this, the people formed themselves into companies or societies; and of these there were two, more important than all the others, and on which these others became in some sort dependent. The one was called the company of the *Credenza*, and, contrary to what from its name might be supposed, it consisted of the inferior artisans, and allied itself with the populace. The other was called the company of the *Motta*, consisting of the better kind of artisans, and it leant towards the aristocracy.

These companies chose magistrates or leaders of their own for the purpose of watching the chiefs of the state. The nobles, joined by the motta, had their podesta Sorresina; the people, represented more truly by the credenza, had theirs, Martino de la Torre, a professed demagogue. Each order appears to have given unlimited powers to the podesta or leader of its own nomination, and to have appointed him, not annually, but once for all; whereas the real podesta had powers defined by law, beside being only in office for a year. The nobles appear to have had two councils, one of the *Vasors* or lesser nobles, the other of the higher, or *capitani*, who, with the archbishop as

* If, as is said, he was appointed in 1250, and if the agreement with Lancia was made in 1253, the latter could only have begun to exercise his office of podesta in 1254, as Gozzadini was podesta during his fourth year.

† A finance-minister, Prina, in whom the Emperor Napoleon had great confidence, was put to death in a sudden revolt of the Milanese nobles about the year 1803: they destroyed him with their umbrellas. Of him Napoleon once said, when discussing the merits of Mr. Pitt, whom he regarded as a mere financier, "*Je préfère mon Prina.*"

president, formed the *Credenza dei Gagliardi*. Each of these councils, that is the *Credenza* or *Credenza de St. Ambrogio* for the commons, the *Gagliardi* and *Vacasari* for the nobles, appear to have made edicts or laws which were binding on their own members, much in the same way as the senate and comitia tributa did at Rome before the period when the decrees of the latter acquired a general legislative force. When it was required to pass a law which should be binding upon the whole state, or to form any resolution upon a matter of universal concernment, the General Council or General Assembly was convoked by the podesta, and consisted of persons deputed from all classes of the community. Its numbers appear to have varied. We are told of two hundred at one time; eight hundred at another, and as many as a thousand at another time. Nothing is known with any kind of accuracy respecting the mode of their deputation or election, or of the qualifications of the persons who chose or were chosen. As almost always happens, historians have filled their works with minute accounts of battles and sieges, and the cruelties of some chiefs and the frauds of others, with the tumults, the fickleness, and the sufferings of the people: but the system by which they were ruled, and out of which almost every thing arose that governed their fortunes, has rarely been deemed worth recording, more rarely still been made the subject of remark.

The people had gained the advantage by the treaty of Ambrogio; but the year after, another civil war having broken out, a new convention was made, by which the nobles recovered the ground they had lost. The military operations had been carried on in the country, where they generally had the mastery; but the dissensions broke out again in the towns, and the people, having gained the advantage, resolved to choose a new officer, with tribunitian authority, though far more dangerous to their liberties: this was a *protector*, or *lord* (*protettore*, or *signore del popolo*); the first name expressing the motive and object of the appointment, the second accurately describing its tendency and result. The two societies, powers, or factions, as they truly were, into which the commons were ranged, the *Credenza* and the *Motta*, would not agree in the person upon whom this important trust should be conferred. Each, therefore, chose its own, and the one of the *Motta* being killed a few days after, and probably also because the *Credenza* were the more numerous, the greater part of

the Motta joined the party of the nobles. The nomination of the Credenza prevailed in favour of Martino della Torre, and the nobles with Sorresina, their podesta, were once more driven from the town and immediately applied for help to Ezzelino da Romano, who, coming to their assistance, was defeated and slain as we have already seen (Part II., Chap. XXIII.). In this victory Martino bore a forward part at the head of the Milanese forces; and the Marquess of Palavicino was joined with them in the campaign. He had long before been chosen chief or lord of Cremona, and succeeded Ezzelino at Brescia, Novara, and other towns. Lodi now chose Martino for its chief, and gave him, from the smallness of the place, more unlimited powers than he had at Milan. The nobles rallied their forces to oppose the commons; and Martino, with the consent of the latter, made a treaty with Palavicino, appointing him their captain-general for five years with a large pay, on condition of his providing them a force of cavalry. Thus fortified against the nobles, the commons defeated them, and reduced eight or nine hundred of them, and their followers, to surrender at discretion. The people loudly required that they should be put to death; but this Martino refused, and would only allow them to be confined in cages, and thus exhibited for many years. The power of Della Torre and his successors was greatly increased by the influence which they derived from obtaining similar elevation, not only at Lodi, but at Como, Bergamo, Vercelli, in all which places the plebeian party was powerful, but chose Della Torre as their chief, under the name of protecting them against the aristocracy, and superintending the administration of justice. He thus obtained in a short time as great power at Milan as in any of those other states, by the never-failing operation of the imperfect federal union which we have had so many occasions to consider, and which we formerly fully explained (Part I., Chap. x.). But it was reserved for the Viscontis, by still further acquisitions, to complete, a few years later, the structure of tyranny, of the which the foundations were laid in the time of the Della Torres.

It would not be easy to find terms sufficiently strong for the expression of those feelings which such conduct as that of the Milanese must raise in every considerate mind; and it is hard to say which of the two orders is the most deserving of reprobation. Neither of them ever gave a thought to the public interest, or to

the liberties of their country, or even to its security from foreign conquest: on the contrary, both appear to have been ever willing that it should submit to a master, and to have cared little for the risk which might be run that the master should be some foreign prince long known as an enemy,—some blood-thirsty tyrant, old in the practice of every crime, or some unprincipled captain of banditti, known only for the mercenary employment of his sword, and his gang, wherever pay was to be earned or plunder obtained. The plebeian party had no kind of excuse for giving up the state to Della Torre, especially after the example of Cremona, which had taken the Palavacinis as protectors, and found them tyrants, who only made a trade of leading them as mercenaries to foreign wars for their own profit. The step was taken solely with a view to party triumph. In order to gain a victory over the nobles, they threw away their free constitution, and set a tyrant over the state, willing to be enslaved themselves for the sake of a momentary triumph over their adversary, and to enjoy the base satisfaction of that adversary sharing afterwards in their own disgrace. The nobles had the excuse of having been driven from the city with every cruelty and ignominy which an exasperated populace, heated with its unexpected victory, and only half recovered from its alarm, could inflict. But to whom did they resort as their champion, to slake their thirst of vengeance against their plebeian oppressors? To the most execrable tyrant that ever modern Italy had produced, so fruitful in every growth of cruelty and of treachery. The monster Ezzelino was the chosen instrument of their fury, and they were anxious first to punish their adversaries by letting loose upon them in war that fiend and his legion, then to destroy their country by installing him as its permanent ruler. When men are so little fitted for self-government by their political education as to give party feelings this mastery over their reason—or are so blinded by their devotion to leaders as to play their game, unreflecting and almost unconscious instruments in their hands—or are so corrupted as to disregard all duties and all ties save those which band them together in the desperate pursuit of some factious or some sordid object—we may most safely pronounce them wholly unfit to be intrusted with political power, and may conclude that the scheme of polity is the best for them which confines their direct interference within the narrowest limits. The same feelings are raised and the same re-

marks are applicable in the case of all the other Lombard republics. In all these was the same sacrifice of principle to party. The same detestable maxim, "Anything to beat an adversary," was the rule of conduct with the factions which distracted and enslaved them all. If the example of Milan is the most striking to show the frightful excesses that spring from such profligacy, it is only because the Ezzelinos and the Viscontis, the worst of all the chiefs who have disgraced human nature, happened to flourish at the time when the Milanese factions were set in array against one another, or because the lesser republics were visited with the like scourges in the shape of more obscure though hardly less wicked tyrants.

Nor did the people, either nobles or commons, in a single instance, after having once given themselves a master, make any effectual exertion to restore the commonwealth, when they found that the expedient which they had adopted led to the extinction of their liberties. At first the Protector, or Lord of the people, took care to preserve the old forms of the constitution. The Della Torres retained the podesta, the councils, the consuls. They only took care to govern themselves in the name and through the co-operation of these functionaries. After a while, the Romish see, taking advantage of the discontent excited by their wars and by the burdens which they laid upon the people, interfered to remove them, and to place the Viscontis in their stead. The people lent themselves to the intrigue and changed their rulers (1377), but made no effort to regain their constitution. Again a sedition was raised, and the Torriani family restored: still no effort on behalf of the people. A few years after (1302), when the Emperor Henry VI. made his progress through Italy, and the Lombard towns were everywhere gained over to his side, chiefly by the persuasions and intrigues of the lawyers, at Milan he was received with the utmost deference, and the Torriani and the Visconti bid against each other for his favour, by proposing larger grants of money than had been originally brought forward; the senate adopted the highest of the three proposals, and the sedition which the rival leaders then raised against Henry only ended in the expulsion of the Torriani, and the appointment of the Imperial vicars or commissaries (*visi*) at Milan, as in the other towns, to administer justice with the podestas, which they did in a manner far more satisfactory to the people.

The Viscontis were now replaced in the Signory; but in 1322

they were driven out by a sedition which the pope had fomented, and in which the nobles, the mob, and the ill-paid German mercenaries of the family had joined. During the few weeks that this change lasted, a republic was nominally formed, but the whole power was vested in a few of the leading nobles and German captains, the main authors of the change. Again the Viscontis were expelled in 1327 by an intrigue of the nobles with the Emperor Louis of Bavaria, and, as before, with the aid of their German mercenaries. A republican form was once more given to the government, of which the powers were nominally vested in a council of twenty-four, one chosen for each tribe, but sitting under the presidency of the Imperial German; and accordingly the emperor levied what taxes he pleased, and governed without the least regard to the people or to the shadow of a constitution which he had given them. Next year he concluded a bargain with the Viscontis, to restore them for a yearly sum of 25,000 florins, and give them, with the seignory, the appointment of Imperial vicar (*missus*); and on his quitting Italy they obtained once more the command of the German mercenaries, which enabled them to regain and greatly to extend all the power they had lost.

John Galeazzo Visconti, before the end of the fourteenth century, was lord of all the Lombard states, from Novara to Vicenza in the north, and on the south to Bologna, Pisa, and Sienna. In 1394, and more fully in 1396, the Emperor Wincleslaus gave him, for the sum of 100,000 florins, the title of Duke of Milan and Count of Pavia, erecting all his dominions into one duchy and county, but not on the plan of the feudal monarchies, which allowed female successions: here, as in all the Italian lordships founded by the emperors, there was no feudal principle introduced, and the succession was in terms limited strictly to male heirs. In the time of this crafty, able, and profligate ruler, there was no chance of the republican government being anywhere revived; but the many reverses of fortune which the family had sustained in the first half of the century had presented repeated opportunities for the successful operation of the republican and aristocratic spirit, had it not been wholly extinct. The division of his dominions among his three sons, the eldest of whom was only thirteen years old—the feebleness of a female regent, governing with a council of seventeen—the defection and mutual quarrels of the German mercenary

captains—the attacks of the emperor—the divisions of the Visconti family themselves—even the continuance of this anarchy for ten years—excited no more than occasionally a sedition in some towns, having no other object than the exchange of one petty tyrant's family for another; and even the detestable tyranny of the eldest Visconti, John Maria, exposing the people to all but unexampled oppression, and calculated to shock men's feelings even more than it embittered their sufferings, as it was combined with no capacity to make it really formidable, and might therefore have been supposed wholly impossible to be endured, although it ended, but after being patiently borne for many years, in the just and righteous assassination of the cannibal himself, never seems to have awakened a thought in any quarter of resisting a government, which, with all its many and great imperfections, seemed to make the appearance of such a monster armed with authority impossible.*

At length this truly infernal family ceased to outrage the world: the male line failed in Philip Maria, who died in 1447, and for three years there was an attempt to govern Milan by a republican constitution. Twenty-four councillors were chosen, four by each of the six quarters, and their authority was limited to two months; and a general assembly of eight hundred was occasionally appealed to, as of old. Pavia, and many of the other Lombard towns, took a similar course, their object being to shake off the Milanese dominion. But in this they ultimately failed, as did the Milanese, to maintain their commonwealth. An able condottiero chief, Francis Sforza, married to J. Galeazzo's daughter, and once in the Milanese service, which he deserted, having gained some brilliant victories, and, above all, having stormed the important town of Placentia, next in magnitude to

* Giovanni Maria Visconti is perhaps the only person in history who raises a doubt on the claims of Ezzelino da Romano to the first place in the black catalogue of tyrants; but his cruel and brutal nature acted on so much more limited a scale, that the balance seems thus cast in Ezzelino's favour. He confined himself to the work of executing the laws on capital convicts, but he sentenced to death himself such as he chose to destroy. He generally hunted his victims with bloodhounds, who were trained and fed with human flesh for the purpose. The names of many gentlemen, some belonging to his own family, are preserved, as having been murdered by him in this manner; and they include the son of one, only twelve years old. The wretchedness experienced by the Lombard people, under the savage and sordid tyranny of the German mercenaries, during the anarchy which followed J. Galeazzo's death, exceeds all that can be found even in the Italian history. The Spaniards in the New World could alone, for avarice and cruelty, afford a match to these blood-thirsty ruffians.

Milan itself, after a long blockade, captured that capital, and was chosen, without any reserve or condition whatever, the lord of the state. At different periods of the war there is no doubt that he might have been successfully resisted, but for the mismanagement of the council, which was, at two several elections, returned from the dregs of the people, and threw away all the advantages that a more respectable body had gained. The final surrender at discretion was partly the work of this council, and partly of the mob, which broke in upon and overpowered them. The negotiation with Venice would certainly have proved fatal to Sforza, had the council under the patrician influence, which planned it, not been changed. Nor was this all: Sforza's scandalous treachery in going over to Venice with his hireling army had made him naturally detested by the Milanese. The extremities to which his blockading army reduced them must have still further exasperated the whole people against him; for never did the inhabitants of any town suffer more severely than the Milanese now did for months. Yet he was received on his entry with almost divine honours, and the enthusiasm of the multitude, whom he had only just ceased to starve, knew no bounds: a victorious general, always faithful to them, who should have defeated him and raised the blockade, could not have been more unanimously hailed as a deliverer by the people whom he had saved. So when he stormed Placentia, every house was destroyed; the very floors and beams were carried away; the inhabitants, beside suffering all the ordinary horrors of such a moment, were tortured to make them discover their treasure; and 10,000 of them, including some of their principal citizens, were carried away and sold as slaves. The town has never since recovered anything like its former prosperity. But Sforza could safely venture, without any escort, within its walls a few months after the horrid scene: he was well received, and chosen by acclamation Lord of the state. It may safely be affirmed that no aristocracy, such as that of Venice or Genoa, could ever have shown the want of firm purpose, and the fickleness towards their worst enemies, which thus degraded the people of Placentia and Milan.

As the surrender had been absolute, and the leading men among the nobles, who would have obtained from Sforza some promise, sure enough indeed to be speedily broken, had of neeces-

sity yielded to the peremptory commands of the conqueror and the base impatience of the multitude, his power of course became equally uncontrolled with that of the Visconti, whom he succeeded; and in the next generation it produced its appointed fruits. The tyranny of his son, Galeazzo, made him a fit successor even to the Visconti. But though a private and family wrong caused his assassination by one of the nobles, after a reign of ten years, patiently submitted to by the people, whose strongest feelings he daily outraged, so little disposition was there to change the government which had produced such monsters, that the supreme power passed quietly to a child of eight years old; and the brave men who had rid the world of this execrable pest were put to death with unheard-of torments. It is to be noted that the atrocities by which his whole life had been stained were of the kind ever found to exasperate the popular feelings most bitterly, and in all ages of the world to produce a greater effect in awaking men from the torpor induced by established despotism, than even the more congenial deeds of cruelty. Outrages upon female virtue, or other grievous displays of unhaste passions, have, from the times of the Greek tyrants and the Roman down to modern days, been very generally the proximate causes of revolt against power lawlessly abused, and have oftentimes proved effectual to this righteous end, after the instinct that makes men recoil from scenes of blood had been appealed to in vain. The people of Milan had not only seen their inhuman despot destroy his victims sometimes by feeding them on filth too disgusting to be named, sometimes by burning them alive, but had beheld him systematically, and by wholesale, subject the wives and daughters of his subjects to the brutal lust of his soldiery, and seen him make the shame of their families public to the world. Yet did not all these enormities suffice to revive the republican spirit, or to create the least desire of limiting an authority thus outrageously abused. The infant child of the tyrant grew up almost an idiot; the quarrels of his uncles for the regency, and the weakness into which the government fell, were all opportunities thrown away upon the Milanese. The state became enfeebled, but the crown continued powerful, by whose hands soever its powers were wielded: till after the country had been overrun by the French, and alternately a Bourbon and a Sforza had held the

sovereignty, it fell under the power of Charles V., with the rest of Northern Italy. It was allowed by him to remain in the last of the Sforza family for a large yearly rent, and on his death was formally seized in 1535 by that ambitious and unprincipled monarch. That the Milanese, who had avoided all opportunity of restoring the commonwealth under the weakest princes, should have ever harboured a thought of resistance to the compact and extensive power of Charles was of course entirely out of the question.

CHAPTER XXVI.

GOVERNMENT OF FLORENCE.

Florence joins the League late—Early Constitution—Consuls; Quarters; Senate—Burgher Aristocracy—At first mixed, then pure—Podesta established—Expelled, and new Government established—Old Constitution restored—New Constitution after Manfred's defeat—Two Councils—Party Government within the Government—Parallel of Jacobin Club—New Constitution—Its Anomalies and Absurdities—Factions Turbulence—Interferes with Justice and Police—Ordinances of Justice—Monstrous Provisions—Popular Aristocracy; Popolani Grossi—Bianchi and Neri—Absurdities of Party—New mode of electing the Seignory—Burgher Oligarchy—Duke of Athens—Progress of Tyranny—Changes in the Constitution—New Party divisions; Natural Aristocracy—Albrizzi and Ricci—Factions Violence—Ciompi; Mob Government—Triumph of the Aristocratic Polity—Influence of Free Institutions—Of Democratic Government—Grandeur of Florence—Feudal and Burgher Economy.

THE early history of Florence resembles that of the other states in the northern part of Italy, except that it appears to have suffered very severely from the Gothic invasion. The city was almost entirely destroyed, and never regained its former importance till it was rebuilt by Charlemagne. The inhabitants, who, like all the Tuscans, have ever been an industrious and frugal race, applied themselves to the pursuits of trade, and were early famous for the excellence of their manufactures, add their expertness in all the transactions of exchange. They bestowed much attention upon the improvement of their police and the arrangement of their municipal administration, but took no part in the Lombard League against Frederick. In 1173, his legate having prevailed upon many of the Tuscan barons to join him, the Florentine territory was ravaged by them, and the consul cast into prison. This determined their course, and they then joined the Tuscan Guelfic League, though for a long time they took no very forward part in its proceedings, and their magistrates rather affected neutrality between the Guelf and the Ghibelline factions, which soon divided the community.

Their municipal government appears to have been simple, and

not materially different from that of the Lombard towns. The executive power was intrusted to consuls, who also commanded the forces. The city being divided into districts, or quarters, originally four, afterwards six, each of these chose one; and the office was annual. A senate of a hundred members, likewise chosen yearly, formed the council of the community, and upon extraordinary emergencies they called together the whole people. But in general the government was in the hands of the consuls and senators, who were invariably of the higher class of burghers, that is, the civic nobility. The city by degrees got the better of the country nobles or barons, and made it expedient, if not necessary, for them to become citizens, for their protection, and to submit their fiefs and vassals to the civic jurisdiction. The government was thus a civic aristocracy, but with a certain influence given to the people, and the power left to any one of becoming by his acquisition of wealth a member of the governing body; nor did the aristocracy become complete till the great victory of the Ghibelline party in 1250. The families, from the equal distribution of property which commercial pursuits tend to produce, were exceedingly numerous. All those of the same house for many generations continued to be regarded as forming one family; so that some had as many as two and even three hundred persons within its circle. The habits which enabled them to amass great wealth do not appear to have been attended during a long time with any taste either for luxurious indulgences or magnificent display. As late as the middle of the thirteenth century the manners of all ranks are described as of extreme and even primitive simplicity; and the parsimony which Dante has satirically commemorated arose from the remains of those frugal and homely habits. But the government was actuated by a spirit of politic liberality when exertions were required for the public service, by undertaking either extensive military operations, or constructing works of general utility, or even of mere ornament and magnificence; and the splendour of the public buildings which that age has left forms a singular contrast with the frugality which reigned in the establishment of the patrician burgher, and would only suffer him to portion his daughter with what would make 200*l.* at the present day.

About the same time with the other towns, in 1207, the practice was introduced of confiding to a foreigner, annually chosen, and

of noble rank, the administration of criminal justice, with the superintendence of the civil judicature vested in subordinate judges, and the execution of the government or political decrees, as well as of his own sentences. The first podesta was a Milanese noble, and the consuls continued to exercise all the other functions of the municipal administration; nor did the podesta at Florence interfere with the command of the forces.

Soon after this time the first great factious divisions of the nobles took place. Before this period there had been very little violence in the disputes of the Guelfs and Ghibellines at Florence. Men were known to favour the one or the other side, but the government kept strictly neutral; and the contest could not be said materially to influence the community. But now the personal quarrel of two families, the *Buondelmonti* and the *Uberti*, arising from a marriage, and followed by a scuffle and an assassination, divided the whole of the body into two parties, bitterly opposed to each other—all the Guelfs, to the number of forty-two families, joining with the Buondelmonti, and all the Ghibellines, twenty-four, taking part with the Uberti. They fortified their houses; they armed their followers; they fought in the streets, or besieged each other's castles, or met in single combat, or set assassins on one another, to the entire destruction of the public peace, and the interruption of all peaceful pursuits among those who were thus banded against each other. But as this state of things lasted for no less than three-and-thirty years, and as the progress of the community in wealth does not appear to have been materially obstructed, we may infer that the people at large took little part in the constant fray, and that the powers of government being in the hands chiefly of those who maintained the contest rendered it impossible to terminate it as long as parties were nearly balanced. But, upon the whole, the Guelfs suffered most severely, no less than thirty-six of their palaces or fortified towns being razed to the ground. What the Uberti wanted in number of families they probably made up in the strength of each, in their wealth, and in their retainers. They had likewise the support of the imperial party abroad; and Frederick made at length a demonstration in their favour, which appears to have been decisive; for in 1248 the government took part against the Guelfs, and drove them from the country. The exclusion of the

people from all interference with the government, and the vesting of its whole powers in the nobles, was now completed.

The natural consequences of this success in a community so constituted soon followed. First, the nobles became more overbearing, and harassed the common people; then these took advantage of the emperor's declining health and expected death to combine against their oppressors. They drove the podesta from the town, and chose a magistrate whom they called captain of the people, giving him a council of twelve senators, or anziani, two chosen by each quarter, and all to remain only two months in office. They distributed the inhabitants of the town into twenty companies, and those of the country districts into ninety-six, and requiring all to serve between the ages of fifteen and sixty-four, thus raised a militia of nearly 100,000 men, the choice of their officers being left to the soldiers. The emperor's death in 1250 enabled them to complete this change, and to recall the exiled party. The parties of the nobles were now compelled to make peace with one another, and to lower the fortifications of their houses; and a new podesta was chosen, to act with the captain of the people. At first Lucca alone of the Tuscan towns had joined the Guelf party; but the new government showed extraordinary vigour in all its operations, and, one after another, the towns were reduced and obliged to unite with the league; but the municipal government of each remained unchanged by these successes of the Florentines.

For some time the Guelfs used their victory with moderation; but the violence of Italian party hatred afterwards found its accustomed vent, and the Ghibellines were banished in 1258. Two years after, with the help of Sienna and other towns, and, above all, with the aid of the Imperial troops, they gained a most complete victory at Arbia, to the almost entire destruction of the Florentine army (Villani, *Stor. Fior.* vi. c. 70, p. 202—Sismondi, c. xviii.). The consequences were important: not only were the Ghibellines recalled and the Guelfs expelled in their turn, but the constitution of 1250 was abolished, the aristocracy restored, and a native Florentine appointed podesta, to hold his office for two years. A convention or diet of the Ghibelline towns was then held, and the entire destruction of Florence and dispersion of its people was strongly urged by the magistrates who

represented Pisa and Sienna, as the only means of preventing future wars, but in reality as the means of extinguishing an adverse party, and destroying a political and commercial rival. Nor could anything have prevented this device from being adopted but the firmness of the Uberti leader, Farinata, who exclaimed against the infernal proposition, and refused to let his country be sacrificed to his party—an act of virtue rare even in modern times and beyond the Alps, but without example in the dark ages of Italy. A renewal of the same scenes followed the emperor's (Manfred) defeat at Grandmilla by Charles of Arragon, in 1266, through the singular weakness of the podesta, Guido Novello, who, ever since the battle of Arbia, had governed with an exclusive court of thirty-six nobles. The Guelfs were once more restored, and with them the democratic government returned. That government however now suffered a material alteration: Charles was allowed to hold the seignory for ten years, appointing a lieutenant-vicar, or Commissioner (*missus*), for superintending the military offences and administration of justice, and the thirty-six councillors of Guido were reduced to twelve: but the political government was now widely different.

The seignory, consisting of the lieutenant and his council, were in every matter to obtain, first of all, the sanction of the Popular Council, a body of one hundred citizens; and then, on the same day, the sanction of the *credenza*, composed of eighty, but in which the chiefs of the seven greater crafts (or arts) had a seat. From these two bodies all Ghibellines and all nobles were excluded. These two other councils it behoved also to consent to every measure, including the appointment of all offices; one of these councils consisted of the *podestas*, of ninety members, both nobles and commoners, besides the chiefs of crafts; and the general council was composed of three hundred citizens, of all ranks. In each of these councils the consent of two-thirds was required to sanction any legislative measure. The great weight of the citizens at large in all these councils, which gave them a direct influence in the government, superseded, generally speaking, the assembly of the people. But there was another constitution at the same time established, which continued to regulate the republic, and to preserve its popular form as long as the commonwealth lasted. This was the administration formed to manage the fund that arose from confiscating the Ghibelline

estates; and it was a complete party government within the government of the state. The Guelfs chose every two months their consuls, called *party captains*, who had their secret council of fourteen members, their general council of sixty, three priors, a treasurer, and a prosecutor of Ghibellines. There never certainly was an instance of any party feud being in any country so disciplined and so wielded. The vigorous administration not only of its own affairs, but those of the republic which it governed, was the result. Had the Jacobin club at Paris been a more regular body, and continued to govern in quiet times, it would have formed a second instance of the same sort.

The quiet of the state and appeasing of party dissensions were not among the consequences of these arrangements. But the vigor which they gave to the administration of public affairs, and the consequent strength to the Guelf party at large made the court of Rome anxious, if possible, to allay intestine divisions that seemed at every moment to threaten the ruin of the republic. Accordingly Nicholas III. exerted himself to bring about a pacification, and with success. The people had never taken any interest in these or the other quarrels of the nobles, and were well pleased to see them terminated on any terms. The chief provision which the pope made was to obtain the recall of the exiled party and the mixed constitution of the earlier council, giving eight places to the Guelfs and six to their adversaries. This arrangement was made in 1279, and as the feeble condition of the Neapolitan dynasty had transferred the lead of the Guelf party at Florence, from the Anjou family to the government of the republic, the arrangements of the party became those of the states, and a final settlement of the constitution was effected upon principles which continued, with two material additions upon nearly the same plan, to govern the system as long as the commonwealth remained free. This important step was taken in the year 1282.

The executive government was vested in a chief, or *Gonfaloniere di giustizia*, and in magistrates called *Priors* of the crafts (*Priori delle arte*), that of the lawyers alone having none. They were lodged in the same palace and maintained at the same table, at the public expense. They held their office for two months only, and were elected by the persons going out of office, the chiefs or gonfaloniers of quarters, with the consuls of the crafts and a cer-

tain number of *adjuncts* whom they chose in the city. The vote was by ballot; and no person could be chosen until he had been two years out of office. It would be difficult to imagine a plan of government more faulty than that which changed the executive power twelve times in a year, unless the same constitution had furnished another example of absurdity still more revolting in the restrictions laid upon the legislative authority. The nine members of the seignory could alone propound new laws, and those only in rotation, each having his day, on which he was absurdly enough called the *proposto*, which, if it meant anything, meant rather *proposito*, and no amendment was allowed to his proposition. The assent of the whole four colleges or councils was required as before, and two-thirds of each must concur in order to give any proposed change the force of law.

The quarrels of the nobles now continued as constant as ever, and their interference with the administration of justice became more intolerable still. Whoever of their number was charged with any offence became the object of protection to his family, so that each prosecution was like the trial of a noble house. There could not be said to exist any police with respect to the order, and as against them the people had no redress for any injury. Such a state of things became unbearable, and the people soon found a leader in Giano della Bella, a noble who renounced his station to head them. A commission was appointed to prepare regulations which might meet the exigencies of the case; and in 1292 the general assembly of the people obtained the adoption of their report, long known and universally reprobated under the name, than which none was ever less descriptive of the thing signified, *Ordinances of justice*. It seems certain that in no country has party violence ever gone the length of openly avowing such designs of oppression as are in this famous instrument plainly disclosed. All iniquitous things have been perpetrated elsewhere, but always under the disguise of some mask, or, if undisguised, yet done without being proclaimed, and done as the exception, not announced as the rule. It was reserved for Florence to promulgate a code of avowed and rank injustice as the rule of conduct in administering a free and popular government. It began by excluding from all office the whole members of the thirty-seven greatest families in the country and depriving them by name of the power to enter into any craft whereby they might become eligible to

office. It gave to the seignory the power of inserting from time to time new names in the book of nobles, and thereby rendering those who bore them equally ineligible with the real nobles; thus inflicting nobility and its disqualifications as a punishment. But the most monstrous of all the provisions contained in this code of democratic justice was the rule of evidence which it applied to the nobles. Mere rumour, if sworn to exist by two credible witnesses, was sufficient, not to put a person on his trial, as has sometimes been said to be the English law of impeachment, though certainly never acted on, but also to warrant his conviction. The adoption of this ordinance was accompanied with the formation of a numerous military police under an official called *Gonfaloniere di Giustizia*; and one of the first acts after the adoption of the plan was to pull down all the houses of the Galetti family, upon the avowed ground that one of them had killed a Florentine citizen somewhere in France.

Meanwhile the influence of the great body of the people was constantly decreasing; the whole power in the state became vested in the wealthier citizens, those called *Popolani grossi*, though the government was practically so democratic that the priori were required to be persons actually exercising themselves the trade of the craft to which they nominally belonged. Yet those wealthier burghers were equally disliked by all above and all below them; the nobles viewed them with contempt, and the common people with aversion, to whom they were more insolent than the real nobles. Nor was it easy to distinguish them from that noble class by their circumstances any more than by their habits. They had their fortified houses or palaces* in the town, their possessions in the country, with vassals and other retainers; their families were numerous, and their younger branches, bred up in ease and indulgence, had all the insolent pride of the patrician order.

Among these nobles there now broke out a new party dissension. At Pistoia there was a private and personal quarrel between two branches of the Cancellieri family, called the *Bianchi* and *Neri* †,

* The term palace, however, at Florence, was applied to so low a kind of mansion, that, in the estimate of losses made on one of the changes of government, all houses were called palaces which were valued at 300 florins, about 420*l.* or 500*l.* of present value.

† So called from *Biancha* or *Bianchi*, the name of a female ancestor of one branch; and by a play on the word, *neri* (black) was given as the name of the other, to distinguish it.

and all the other families making common cause with these after the fashion of the age, the community was involved in perpetual discord and violence, and the government to quell it gave up to Florence the seignory for ten years. The government ordered the leaders of both factions to leave Pistoia and come to Florence. There it happened that a quarrel existed between an ancient family the Donata, and one of the Popolani grossi; the Cerchi and some of the Neri having been received into the houses of the former, the latter received the Bianchi, from a spirit of opposition. This was quite enough to inoculate all Florence with the Pistoian parties, and the whole families of distinction became ranged against each other as Bianchi or Neri; but with so little regard to anything like principle, or opinion, or consistency, that the Bianchi, who were for the new as against the old nobility—the Grossi popolani as against the nobles—were all Ghibellines, whose principles were aristocratic, hostile to all popular encroachments, and favourable to even absolute power, certainly to the ancient established order of things; while the Neri, who held by the rights of the ancient nobility, and were the patrician party, were all Guelfs, whose principle it was to take part with the people as against the aristocracy, and to favour popular government.

The only other change that took place in the constitution of 1282, after the ordinance excluding the nobles, related to the manner of choosing the seignory, and it was of great importance. Ever since that constitution was established, the electoral body had continued the same as we have described it, namely, the late priors, the police chiefs or gonfalonieri of the quarters, the councils of crafts and adjuncts; and the elections were six times a-year. In 1323, when there was a great pressure upon the country from foreign war, the seignory, having gained much credit with all the people by the discovery of several plots among the nobles, took upon themselves, in concert with the adjuncts, to name, instead of six succeeding priors, one hundred and twenty-six, who should every two months rise by lot to the six vacant places—thus anticipating the elections for three years and a half. The same principle was soon after applied to the offices of gonfalonieri di giustizia, to that of the twelve prudhommes or councillors of the priors, and to the college of sixteen gonfalonieri. Thus seven hundred and thirty-five persons were selected at once and by one

set of electors; and out of these, every two months thirty-five were drawn by lot; so that for three years and a half no discretion whatever could be exercised by any of those having the right of selection. These priori, belonging to the popolani grossi, of course selected their creatures for these places. These popolani grossi had now so far monopolized the chief power, that Florence might be said to be entirely governed by a burgher oligarchy; and about the year 1340 it was understood that twelve of those powerful citizens engrossed the whole authority of the state and named to all its offices. They took upon themselves the creation of a new magistrate, a kind of chief judge; and they appointed a captain, with high powers, to command a guard for the government.

Two years after, this example was followed by the people, who became enraged at the failure of an attack upon Lucca, and chose the Duke of Athens captain of justice and commander in chief. The oligarchy are accused of having secretly urged on the duke to acts of cruelty and oppression against their adversaries, the nobles and the people, in order to divert their attention from their own misconduct. However, it is certain that he turned upon themselves and made severe examples of several. Soon after it was found that those burgher chiefs had been appropriating public money without account, and the nobles and the rich merchants, whom the oligarchy excluded from office, joined the mob in giving absolute power for life to the duke. It is true he held it but for a year, being driven away in consequence of his sordid exactions, his oppressive and offensive conduct, and the tyranny and perfidy which he exercised towards all classes in succession after having filled every place with the very scum of the people. But the nation, having once voluntarily submitted to the dominion of a sovereign, was prepared for any tyranny that could be disguised under plausible pretexts, designated by inoffensive names, assumed by slow degrees, and exercised without needless severity—a memorable though a very ordinary example of the manner in which despotism creeps upon a community where the genuine spirit of liberty has been extinguished by the debasement of national character, or perverted by the arts of party.

The losses sustained by the republic during the government of the duke have perhaps been overrated, yet they were very considerable: for, beside losing all the conquests in Lucca, Pistoia,

Volterra, Arezzo, that base and vulgar tyrant had nearly trebled the land-tax, robbed the public creditor of the funds assigned for his security, grievously increased the other taxes, and in the short space of ten months appropriated a sum equal to half a million of our present money, great part of which he had vested in foreign funds.

If the nobles had conducted themselves with ordinary prudence, they would certainly have obtained a repeal of the infamous Ordinance, as soon as they had, with the assistance of the people, overthrown the tyrant whom the mob had, but with their assent, set up. The ordinance was in fact suspended in their favour, and they were admitted to one-third of the public employments; when their revenge for so long an exclusion burst forth in acts of violence against the other orders, and led to an immediate re-enactment of the ordinance, in all its unmitigated injustice. Civil war ensued; the nobles were defeated, many of their palaces pillaged and burnt, and all that remained of the changes which had been effected in the ordinance was the erasing from the noble list between five hundred and six hundred families—either those whose poverty made them rather tools in the hands of others than formidable in themselves, or those whose conduct towards the commons appeared to have merited this favour. Some of the greatest families received this mark of distinction, and becoming commoners were thenceforth rendered again capable of holding office. The division of the city into four equal quarters, instead of six very unequal, was a material improvement introduced at the same time, and the seignory was composed of the gonfalonier with eight priors, two from each quarter. The council of the seignory was to consist of twelve citizens and sixteen chiefs of companies. But the most remarkable part of the change was the provision that, of the nine constituting the seignory, three should be taken from each class of burghers—for, in fact, the commoners were now divided not into two ranks merely, the grossi and the inferior ones, but into three; those below the grossi having become separated into the middle classes and the artisans. Such is the inevitable tendency of the Natural Aristocracy to create divisions, and so certainly do those who get a little above others endeavour to act like their superiors and to look down upon those beneath them. The middle burghers, in all probability, were now as much disliked by the artisans as they disliked the grossi—and they probably looked

down upon the artisans as much as they were looked down upon by the grossi.

These dissensions, and the old difference of Guelfs and Ghibelines combined to create, in the middle of the fourteenth century, the parties of *Albizzi* and *Ricci*, the occasion as usual being a family quarrel, through which the elements of the discord previously existing only found a vent. The Albizzi, though of the Guelf or liberal and democratic party, were the supporters of the popular nobility, or new aristocracy; the Ricci, though Ghibelines, headed the democratic party, or those opposed to the popolani grossi and attached to the middle and lower classes. Yet both parties had for their leaders families of the same new nobility, whose members were playing the same game with their inferiors against one another as had so often been played by the conflicting parties of the real and old nobility both in this and other states. The most outrageous proceedings were the result of these factitious struggles, and upon one occasion the very rabble took the lead against both parties, banding themselves under the name of *Ciompi*, and terrifying the government into an unconditional surrender of the whole constitution and the establishment of mob government by law. The republic was tossed about from one set of rebels to another in a state of constant anarchy for three years, from 1378 to 1381. But the influence of the Albizzi party was finally established, and it governed the state for above half a century with great success, extraordinary ability, and as much virtue as could well be expected in that age and among that people.

The triumph of aristocratic government is perhaps more justly to be marked in the history of Florence during that celebrated period than even in the more extended annals of the Venetian polity. The burgher patricians could not be accused of infringing the rights of the other orders, or of assuming either power or wealth at the expense of their interests. At home their government was moderate, and it was, generally speaking, vigorous. In foreign affairs it was distinguished by an enlarged and disinterested policy, which, while it raised the name and influence of the republic, successively checked the conquests of the Visconti and of Naples, and consulted the interests of all Italy by wisely taking the course that prevented encroachments in one quarter, and afforded everywhere protection to national independence. The origin of those achievements which Tuscany made in letters and

the arts may be also mainly traced to the same period, although, as we have so often had occasion to observe in other countries, the merit was afterwards ascribed to those who succeeded, namely, the Medici, and who reaped the harvest prepared by the preceding age. But it is to be well noted in commemorating the glories of the Florentine aristocracy, that these dreadful scenes of strife and pillage and bloodshed, in which the reign of the Albizzi began, had their origin in the contentions of the leading families of the new nobility, and that even the mob revolt of the *ciompi* was instigated by the proceedings of the Ricci, particularly Salvestro dei Medici. It may be well to remark further the pitch of wealth and grandeur which Florence had reached under its popular government, and at which not all the turbulence of its democracy, nor the factions wherewith its aristocracy had distracted the community, had prevented its industrious people and skilful traders from arriving, under the happy influence of free institutions.

There were in the whole state little above 600,000 inhabitants, of whom 150,000 belonged to the city; but more than 100,000 of these were enrolled as militia. In time of war, the republic, conscious of the want of military valour, which distinguished its subjects as much as did their political courage, employed mercenary troops, and incurred heavy debts; but in peace, when these were discharged, the revenue was six times greater than the expenditure, and the debts were rapidly extinguished. None of the native magistrates or ministers received any other reward than the gratification of their ambition, and the satisfaction of discharging a public duty. In fact all were actively engaged in the lucrative pursuits of commerce and manufactures. The yearly produce of the woollen trade, the great staple of the country, was equal to two millions of our present money; the ships of the republic were seen in every sea, the merchants in every trading city; the capitalists had the command of almost all the changes in Europe, and could influence most of its courts; there were no less than eighty bankers and dealers in money belonging to the city; and the yearly coinage greatly exceeded half a million of our money. These things however were more nearly akin to the pursuits of traders than other branches of industry, and the more liberal pursuits, in which even during the most democratic period of their history the Florentines excelled. Nowhere was agriculture in all its departments more liberally protected, more strenuously or more

successfully pursued. The feudal nobles had no reason to pride themselves upon any superiority in this respect. On the contrary, the country smiled chiefly under the rule of the burgher government; and it was universally allowed that the eye could at once distinguish between the lands held as fiefs, and those of rich merchants, by the far higher state of culture in which the latter uniformly were found. The leading families, truly termed merchant-princes, cultivated literature, science, all the fine arts, and were the patrons of genius in every department. The democratic government had, before the temporary surrender of the state to the Duke of Athens, and the more permanent establishment, first of the aristocracy, and then of the tyrannical sovereignty, extended the power of the republic, by conquest and by negotiation, over most of the Tuscan states; had frustrated all the attempts of Milan to overpower it; had resisted the imperial aggressions, particularly in Henry VII.'s time, when it formed the league which secured the independence of all Italy; had checked the Scalas in their usurpations, and saved the principality of Padua from their domination. It is certain that the democratic power in no other Italian commonwealth was attended with so wise and vigorous an administration, and in none produced so few of the evils in foreign affairs inseparable from that scheme of polity.

The government of Florence, after the period which we have been considering, became monarchical, and belongs to the former part of this work. It has accordingly been already examined, as have also been the steps by which the commonwealth was destroyed.

CHAPTER XXVII.

LESSER ITALIAN GOVERNMENTS—PISA—BOLOGNA—SIENNA—
LUCCA—SAN MARINO.

Want of Information respecting PISA.

BOLOGNA—Early Charter and Government—Early regularity of the Constitution—
Consuls; Councils; Podesta; Public Orators—Party Feuds.

SIENNA—Aristocracy never entirely extinguished—Consuls; Podesta; Council—Oli-
garchy established; steps of the transition—Intrigues of the Oligarchs with Foreign
Powers—Oligarchs overthrown—Burgher Aristocracy and Oligarchy—Government
falls into the hands of the lowest Class—Surrender to Visconti—Factional Turbulence
and Revolutions—Petrucchi's Power—Five Orders recognised—Duke of Calabria—
Mob Oligarchy—Revolution and New Government—Dictatorship, and Destruction
of this Constitution—Government of Spain and France alternately—Union with Tus-
cany—Real duration of Siennese Oligarchy.

LUCCA—Revolutions deserving of attention—Early Government and Parties—Cas-
truccio Castracani's Services and Usurpation—Good Conduct of the Lucchese—
Anziani; Gonfaloniere; College; Great Council—Practical Oligarchy—Paul
Ginigi—His great Merit—Cruel Fate—Republic restored—Perfidy and Conquest
of the Medici—Martinian Law—Oligarchy finally established—Its permanence.

SAN MARINO—Antiquity of its Government—Extent and Population—Constitution;
Anziani; Senate; Gonfaloniere; Capitani—Judicial Authority.

It would be useless, and indeed in most instances only give rise to repetitions of the same remarks, upon almost the same facts, were we to examine in detail the constitutions and the history of the other Italian commonwealths. The one which, after those we have been considering, may be most calculated to interest the political observer, is Pisa, from the very early period at which her commercial importance was established, and from the lead which she took in the cultivation of the arts, occupying a position extraordinarily disproportioned to her natural resources. But unfortunately there is no one of the Italian states respecting which we have so little authentic information. The period of her prosperity was from the eleventh to the thirteenth century, before the end of which she had fallen into complete decline. But no native historian has treated of her affairs at any time, and what we know of them is gathered from very scanty notices, occasionally given by writers, all of whom belonged to the countries of her

enemies and rivals. It is certain, however, that her constitution was nearly the same with the early ones of Florence and other towns, and that the same dissensions prevailed among her nobles and burghers.

On the other hand, there is no one of the early governments of which we have more detailed information than we possess of the Bolognese. At the beginning of the twelfth century Bologna received from the Emperor Henry V. a municipal charter, giving it the right of coinage, and of choosing its consuls and other magistrates. They were to be taken from the nobles; and the judges were to administer justice in the emperor's name. There was the usual division of the town into quarters or wards, the usual command of the militia in each by its gonfaloniere, or standard-bearer, the usual opposition of the country to the civic nobles, and the enrolment of the former ultimately among the citizens. At the end of the war between the Emperor Frederick and the Lombard league, we find the government at Bologna a leading member of that league, described as reduced to a more fixed and better defined state than that of almost any other commonwealth—a condition which it had attained some time before, but in all probability by slow degrees, so that the exact period cannot truly be assigned with the accuracy which some writers have affected. The General Council was composed of all citizens eighteen years old, excluding only the lowest citizens and labourers; the Special or Lesser Council consisted of six hundred citizens, and the executive, or *Credenza*, was not numerous, but all lawyers had a right to seats in it. The members of the special council and *credenza* were named yearly, by ten persons in each of the four tribes into which the inhabitants were divided; these ten were drawn by lot, and selected the councillors of their tribe. Nothing is known of the manner in which the consuls were chosen; the *podesta* was a foreigner, annually appointed by forty members of the General and Special councils; these were drawn by lot, and enclosed in a kind of conclave, but obliged to make their choice by a majority of twenty-seven, within twenty-four hours, or they lost their right of election. The councils generally named the town from which he was to be taken, and the law required that he should have no relationship with any of the electors, thus leaving it to chance

whether the fittest persons should not be excluded. The law likewise required that he should be a noble, thirty-six years of age, and having no landed property in the state. The consuls and podesta, or some one by their leave, could alone make any proposition to the councils; and nothing was binding on the community without the consent of all the councils. In general the measures propounded by the consuls, or podesta, were only discussed by four public orators, the rest of the meeting having little more to do than ballot for its adoption or rejection.

The same war of party, as in other states, distracted and exhausted Bologna. The Guelfs were led by the Gierenci family, the Ghibellines by the Lambertazzi; and after a succession of ordinary hostilities, with little bloodshed, the amour of a Lambertazzi with a Gierenci, followed as was usual with an assassination, produced an open rupture, in which all the nobles and many of the commons took part. The Gierenci, having captured all the fortified houses of their adversaries, obtained a sentence of banishment, of which 12,000 according to one account, 15,000 according to another, were expelled, their property confiscated, and their houses razed to the ground. Both parties had called in foreign assistance, and the Lambertazzi, after their expulsion, fought against their country, in union with the refugee Ghibellines from all other parts of Italy. The victorious party of the Gierenci had to protect themselves by the aid, first of the pope, then of the Visconti, which they purchased with the surrender of the commonwealth's independence; and we have seen (Part I., Chap. XVIII.) by what steps the alternate anarchy and dangers of the state led at Bologna to the loss of its independence, as well as its liberties.

Sienna presents few peculiarities to distinguish its early political history from that of the other commonwealths. It was a bishop's see in the sixth century. In the contests between the pope and the emperor it generally took the Ghibelline, or imperial side. The government was republican, and resembled that of Florence, and after the aristocratic period the people obtained the chief power, though the nobles were never excluded so entirely from the administration of its affairs as at Florence, owing in a great measure to the ascendant of the Ghibelline party, and the support which it received from the imperialists. It is a decisive proof of the aristocratic influence never having been entirely subdued, that

when the Florentines conquered Sienna in 1254, they and their Guelf allies in the republic left the government entirely unchanged; and when, four years after, the Ghibellines were banished from Florence, they were received and sheltered in Sienna, where they prepared the great victory which was afterwards gained, as we have seen, at Arbia. The government was vested in consuls, a podestà, and a council, the seignory consisting of fifteen inhabitants in all. Towards the latter part of the thirteenth century the Guelf party had the ascendant, and the republic joined the great Tuscan league against Genoa, in which Pisa alone refused to take a part. When the great revolution of 1282 changed the government of Florence, the people of Sienna immediately after followed the example of their powerful neighbours. In place of the council of fifteen, nine officers were appointed, under the name of governors and defenders of the people: they were all to be taken from the burghers, and the nobles to be entirely excluded; their term of office was, as at Florence, two months; and, like the Florentine priori, they were lodged together and maintained at the public expense; finally, they were chosen for each of the three wards or quarters of the city. The burghers were to choose the nine defenders; and they formed, in the course of a few years after this constitution was established, a list or register of the families to whom they were resolved to confine the elective franchise, as well as the eligibility.

The manner in which this transition to oligarchy was effected deserves our attention, because we have in hardly any other instance the course recorded which the faction pursued in order to accomplish its monopoly of power. The General Council of the people were the electors, and it consisted of four hundred. At first, the election was six times a year, but immediately after they chose the whole six sets at once, and, as at Florence, drew the Nine every two months by lot. But those first chosen having the right to attend the council, and to cause a new election as soon as the fifty-four first chosen were exhausted, these combined together and voted against any new name being selected, or at least any name of which they disapproved, for they allowed a few additions occasionally to be made. The votes of some who supported them, together with their own, were sure to defeat those who desired to promote other persons, but who did not act with the same concert in favour of the same names. We have in our own times, both in the India House and

in the ballots for secret committees in parliament, examples of the effect of a house-list, which this was. The whole number of the persons who were inscribed in this list was under ninety, the number of families probably less than thirty. There was thus constituted a class, or rank, which got the name of the "*Mountain*," or "*Order of the Nine*." * This burgher aristocracy was really an oligarchy, for it monopolized the powers of government to the absolute exclusion of a portion of its own body. The privileged governing class soon became alike odious to the nobles and the people, and especially to the class from which themselves were taken. Accordingly, aware of their unpopularity, and of the danger to which it exposed them, they endeavoured to intrigue with foreign states to obtain support, and at any rate were afraid of taking any decided course which could shake their security. This was shown in all their relations both with Milan and Florence; but in 1355 they placed the republic under the emperor's authority, in order to obtain his protection for their own usurped power. Charles IV. however found, upon arriving at Sienna, that he had espoused a party that was opposed by the nobles, the populace, and the greater number of the wealthy citizens, and heard nothing but cries of "*Death to the Nine*," wherever he went, coupled with favourable expressions towards himself. He lost no time in abandoning those he had come to support, and forfeiting his pledges in their behalf; he suffered the mob to pillage their houses, insult their persons, and even murder them as they fled; he made decrees against all the "*Order of the Nine*;" appointed thirty commissioners, of whom twelve were nobles, to reform the government under the presidency of his natural brother; and left lieutenants to maintain, on his departure, the sovereign authority he had obtained by his treaty with the Nine, and which he did not think fit to lay down upon their overthrow. On his return, a few weeks after, having meanwhile been crowned at Rome, he made no other stipulation with the people, except that his brother should have the seignory, in order that there should be some one to arbitrate between the conflicting parties. The government had been settled by the commission in his absence, and had pronounced sentence of perpetual exclusion against the Order of the Nine, vesting the administration in Twelve burghers,

* Andrea, *Dei Cronica Senese*, 1283, tom. xv., p. 38—Malavolti, *Storia*, Parte II. lib. iii., fol. 50—Mat. Vil., iv., 61, p. 278.

chosen in the same manner and at the same time as the Nine had been, but adding a college of six nobles as councillors of the seignory or the twelve, and adding one hundred and fifty, also nobles, to the general council of four hundred. No sooner had the emperor left Sienna than the people rose upon his brother and drove him from the state, thus investing the Twelve with supreme authority. For they pursued exactly the same course which the Nine had formerly taken, with this additional circumstance as regards their brother burghers, that they began their encroachments with a positive law excluding from power thirty of the first families among the commoners. They succeeded, however, to the odium as well as to the authority of the Nine, and endeavoured to protect themselves by fomenting divisions among the nobles, to whom they were as hateful as to the people. A perfidious attempt of this kind to take advantage of the hereditary feud between the *Tolomei* and *Salimberri*, the leading families of the Guelfs and Ghibellines respectively, was defeated by the still greater craft of the nobles themselves; and at the moment when the oligarchs expected to see a conflict between the forces of the feudal vassals and the imperialist troops of which they had the command, both armies united against themselves, together with the retainers of the Nine and many of the people; and they were overthrown, after a reign of thirteen years.

The nobles now endeavoured to restore the old government under the consuls, only rendering it more entirely aristocratic, by taking ten from their own order generally, and three from the Order of the Nine. The people rebelled against this proposition, and both parties having appealed to Charles, he sent a force, which the nobles would have defeated, had not the Twelve and the people united to receive the imperial troops, driving the barons to their castles in the country. A government of compromise was now formed: it consisted of twelve, taking three from the "Order of Nine," four from the "Order of Twelve," and five from the rest of the burghers, who were formed into a third order called "the Reformers."* The two councils were to be formed of the orders in the same proportions; and the nobles were absolutely excluded. An imperial lieutenant (or vicar) was placed at the head of the republic. The Twelve, however, raised a revolt against an

* Monte dei 9—Monte dei 12—and Monte dei Riformatori.—Malavolti, *Storia Senese*, Part II., lib. vii.

arrangement far too equitable to suit their purpose ; and failing in their design, immediately joined the emperor in his base and sordid scheme of selling Sienna with other Tuscan cities to the see of Rome. The general council having thwarted all their proceedings, they took arms against the rest of the authorities, and were, with the emperor, signally defeated. The nobles now made a great effort to regain their authority, and all parties agreed in calling in the mediation of Florence. The result was that the nobles were recalled, and rendered capable of holding all offices except those constituting the seignory. The proportion was fixed in which they and the people should hold the inferior magistracies. This arrangement did not last long, and the whole power was soon usurped by the Order of Reformers, composed of the lower classes of artisans. Their oppression became equally unbearable to the nobles and the rest of the community. The orders of the Nine and the Twelve now joined the nobles against them, and a sanguinary struggle ensued, which ended in driving 4000 of the unpopular order and its partisans out of the town, and vesting the government in the orders of the Nine and the Twelve, and a new order formed of a portion of the lowest class, which had been excluded from the order of reformers, and called the Order of the People (*monte del popolo*). This happened in 1385; and in the course of the next two or three years the old enmity against Florence broke out more fiercely than ever, and the Siennese actually had the baseness to offer their sovereignty to John Galeazzo Visconti, in the hope that the result would be his establishing an absolute power over their rivals the Florentines. He deemed it prudent to refuse it for the present ; but after continued wars with Florence, and still more after the weakness induced by the folly and violence of the government, vested in the lowest classes, had exhausted the country, and when the spirit of the people was broken by the conflict of the factions and the tyranny of the successive oligarchies, Visconti obtained his favourite object, and Sienna, as well as Pisa, was given up to him, and held in sovereignty from 1399 until his death in 1402.

During the whole of the fifteenth and the first half of the sixteenth century, the history of Sienna presents a constant series of factions and changes ; the power being in the hands sometimes of one order of the burgesses, sometimes of the other ; and once, for above twenty years, in the hands of a person of great capacity,

called Petrucci, of an ancient family, who obtained the chief influence in 1439 over the executive council with declaratory powers (*valia*) appointed to settle the state, and retained it through the influence of the French monarch Louis XII., till his death in 1512. There were, in fact, five orders now recognised at Sienna : the old, or country, or Feudal Nobles ; the Nine, or one body of popular nobles ; the Twelve, who were another body of the same class ; the Reformers ; and the People. From the Nine, the Twelve, and the Reformers, were excluded a body of four hundred wealthy and respectable traders, quite fitted in all respects for holding the higher stations ; the jealousy and monopolizing spirit of the government kept them out. In 1403 a coalition was effected of the Nine, the Reformers, and the People ; and during the fifteenth century this combination excluded all the rest. These three orders by turns chose the gonfaloniere, and each of them gave their powers to the seignory. In 1408 and 1409 the urgent remonstrances of Pius II. made the seignory add to the number of privileged families the Piccolomini, and open to the nobles a part of the offices, though positively refusing to include the order of the Twelve in the permission. In 1464, however, the pope died, and the admission of the nobles was immediately repealed. During the long period of what was called the "*Trinity*" government (that is, the coalition of the Nine, the Reformers, and the People), the affairs of the country had been upon the whole tolerably well administered ; but the usual scope had been given to foreign intrigue, and the Duke of Calabria coming in force to Sienna in 1480, was only prevented from annexing it to Naples by the sudden landing of the Turkish army at Otranto. On his leaving the city, the most dreadful contests, burnings, and massacres took place among the Orders, and at length, in 1492, a resolution was taken to have but one order, into which all the rest should be fused. This, however, would not satisfy the democratic party, who insisted on a line being drawn for the purpose of excluding those of the Orders allowed to hold office who had any patrician connexion. A complete mob oligarchy was, after new massacres, re-established, and with this the Medici family treated and intrigued. In 1487 a revolution was effected without bloodshed, and the Great Council was now to consist of seven hundred and twenty, one hundred and eighty to be chosen by the Reformers, as many by the People, as many by the Nine, and as many by

the Nobles and the Twelve jointly. In a very short time, however, a dictatorship (or *valia*) of twenty-four was appointed, and this new constitution was at once swept away,—with the usual accompaniments of such changes, the banishment and execution of many parties. After being for nearly thirty years under the protection, that is under the government of Charles V., and Philip II., and the Kings of France, and having sometimes a Spanish, sometimes a French, garrison introduced to quell their factions, the Siennese finally abandoned even the forms of their republican government in 1557, and were united to Tuscany.

The government of Sienna certainly presents the most remarkable instance of an oligarchy continuing for a great length of time. Yet it did not in reality last so much longer, as at first sight it may appear to have done, than the principles might have led us to expect. The first dominion of the Nine was undoubtedly oligarchical, and it continued for the extraordinary period of above seventy years, from 1283 to 1355. The government, too, was almost constantly oligarchical during the rest of the fourteenth century, and a part of the fifteenth. But the same oligarchy did not continue in power. Thus the Twelve who succeeded the Nine, in 1355, only remained thirteen years in power. The power of the Reformers, at their first usurpation, did not last so long: the power of the lowest class, the Order of the People, beside being shared with the other Orders of the Twelve and the Nine, was interrupted by the surrender to Visconti before it had lasted above a few years; and the succeeding century presents us with a succession of changes. The natural tendency of an oligarchy, therefore, to be overthrown, and the great difficulty to support itself which that government must ever have, which, from its nature, must unite against its existence all its own natural supporters, is by no means contradicted by any portion of Siennese history, except only the earlier period when the Nine first ruled. In all other respects that, as well as the more recent period, is calculated fully to confirm whatever has been either here or elsewhere laid down respecting the tendency of oligarchical government, or rather the oligarchical abuse of republican government, to injure all the best interests, foreign and domestic, of the community.

The small state of Lucca merits a particular examination, not only on account of its early progress in civilization and wealth, and of the extraordinary degree in which it swarmed at all times with inhabitants, but because of the singular political measures which at different periods changed its government. It belonged, with Florence, Sienna, and all the other towns, except Pisa, to the remarkable association of which we have already spoken, the Tuscan League, in the twelfth century. It had originally an aristocratic, then a republican government, like the other states, and was, like them, a prey both to the factions of its own families, and to the more general divisions in which all Italy took a part. Like Florence it adopted the Pistoian division of the *Bianchi* and *Neri*, and these parties experienced the same numerous and sudden reverses in Lucca as elsewhere. When the Bianchi, or Ghibellines, were banished in 1301, and an aristocratic government was formed, the principal influence in the state fell into the hands of the Obizei family; but they became odious to the people as well as the rest of the nobles, and a combination of the two classes overthrew them, and recalled the Guelfs in 1314. Castuccio Castracani, of whom we have already spoken (Part II., Chapter XVIII.), intrigued with the Pisan chiefs to further his own designs upon the sovereignty, but afterwards defended Lucca against them, and was made captain of the people and the forces. He was chosen three successive years to the office, and, having gained the favour of the common people, and gratified them by assisting to banish the Guelfs, he openly claimed the absolute sovereignty, which the senate conferred upon him by a majority of two hundred and nine, out of two hundred and ten who voted on his proposition. The magistrates were chosen as before, the outward forms of the constitution being maintained by him, as it always was by usurpers in Italian commonwealths, at least for some time after they obtained the chief power, but generally, also in name, even after they had engrossed all the real authority to themselves. In 1327 the emperor Lewis of Bavaria erected Lucca, Volterra, and Pistoia into a duchy for him; but next year, with his accustomed rapacity and faithlessness, he seized Lucca, and sold it to another branch of the Castracani family; and, in the course of forty years, it was made the subject of barter and sale seven several times by usurpers, princes, and mercenary captains. From the year 1342 it was surrendered to Pisa, but

finally, in 1369, Charles IV., for a large sum (equal to nearly half a million of our present money), established its independence, vesting the government in ten anziani, as before. It has ever been esteemed a singular merit in the Lucca people that, during the fifty-five years of their subjugation, they retained the constant resolution, if possible, to regain their independence, and that no other people either kept so free from foreign intrigue, or so universally maintained their courage and hopes under adverse fortune.

The government was now in some degree changed, but its fundamental principles remained the same as before the subjugation. In 1323 the Florentine plan had been adopted of choosing magistrates at once for several elections, and then drawing their names by lot, and this practice continued ever after. The people were now distributed into three tribes, instead of the city being divided into wards as before. The executive government, or signiory, consisted of a gonfaloniere and nine anziani, three for each tribe; these all remained in office for two months, and were obliged then either to retire altogether, or change their offices. There was a college, or lesser council, of thirty-six, chosen for six months; and a great, or general council, originally of two hundred, afterwards of ninety, chosen yearly. The members of these different bodies, in effect, chose their successors, and consequently always remained in office, with the single change of going out for a while, to comply with the law. The nobles were absolutely excluded from all offices and all councils. This kind of rotation, by which the same persons continued to remain always in place, was known among the Florentines by the nickname of the "little circle government" (*signoria del cerchiolino*). Among the families to whom this practical oligarchy gave the principal control, the most powerful was that of the Giunigi; they gradually obtained an almost unbounded influence; and thirty years after the Lucchese independence had been restored, the plague having carried off most of their leading men, Paul Giunigi took advantage of his family's power in the republic, and the accidental absence of all competition, to usurp the sovereignty, and abolish the places of anziani altogether, in nearly the same way in which Bentivoglio soon after, in similar circumstances, usurped absolute power at Bologna. None of the Italian tyrants, subverters of the com-

monwealth, is spoken of with such contempt as this individual, as if the want of showy talents, and the administering of a people's affairs, without brilliant exploits, were a disgrace to a prince and a discredit to his subjects. For thirty years he maintained peace and good order at home, avoided all foreign wars, introduced many wholesome laws, which long survived his age, and appears to have been among the very best, though also the most obscure, of the sovereigns who governed Italy, or indeed Europe, in modern times. When he could no longer avoid war, and the country was invaded by Florence, he made as gallant and obstinate a resistance as ever was offered to unprincipled aggression; and his reign was only cut short by a foul conspiracy, which those who favoured a surrender to the enemy assisted. He was seized and sent to Milan a prisoner, and ended his days in a dungeon.

The old republican government was immediately restored, and lasted, with few changes, down to the middle of the sixteenth century (1551), when the discontent of the workmen at laws made to favour the masters produced a revolt, and they were appeased by adding to the general council a proportion of wealthy or respectable persons not belonging to the class of popular or burgher nobles. But the next year, the government having obtained a body-guard, and being aided by the militia of the country districts, this law was repealed, and the former exclusive system restored. In 1554 the imperialists in league with Cosmo I., of Florence (Medici), having overpowered Sienna, and reduced it by famine to capitulate, on the solemn promise of preserving its liberty and constitution, and this promise having been shamefully broken, so that Sienna was, with the rest of the Tuscan states, entirely subjugated; a law was proposed and adopted, called, from its author, Martino Bernadini, the *Martinian law*, by which all persons were absolutely and perpetually excluded from office who were either born out of the city, or who were sons of such, or of any country proprietor. The practical result of this regulation (B. An. Loc. lib. xv.) was to vest the government entirely in the hands of a limited number of families, who could never be increased, and it engrossed the government as completely as the famous Serrata did that of Venice. The result was that in 1600 there were only one hundred and eighty-six families capable

of holding office; and in 1797, on the French invasion, only eighty-eight—in fact not enough to afford the number of persons wanted to fill all the offices in the republic.

There still exists, after the utter subversion of all other commonwealths, a small republic, with a mixed aristocratical government, which we may shortly describe in this place, though it ought perhaps to have been treated of under another head. The state of San Marino has survived all the changes which the rest of Italy underwent, first in the dark ages, then in the times of struggle between the emperor and the papal see, afterwards in the foreign aggressions which changed the possession, and the domestic usurpations which altered the government of all the other commonwealths, and lastly in the revolutionary times near our own day. It is in truth the smallest and the most ancient government in Europe, dating its commencement from the eighth century, if we count it as founded when the town was built, or from the tenth, if we date it by the time when it became walled for defence. The small extent and importance of this district has been the cause of its escaping the general fate. The popes frequently attempted to seize possession of it, and it took part with the Ghibellines, or imperialists. Innocent IV. laid it under excommunication; and at the end of the thirteenth century, the rector sent by Boniface VIII. to govern that part of Romagna, Urbino, in which San Marino lies, sent a vicar, or lieutenant, to Montefeltro, of which San Marino is part, in order to enforce the payment of dues claimed by the See of Rome. The inhabitants refused, and the matter being referred to a judge of Rimini, a man of learning and probity, he decreed that the republic was, and had from all time been, independent. A charter was accordingly granted to it by the papal vicar. The popes never afterwards persevered in their attempts against this little community; Napoleon gained some cheap popularity by respecting its independence, when he overran Italy in later times; and on the pope's restoration in 1814 the independence of the republic was confirmed. The extent of the territory is confined to twenty-seven square miles, chiefly of a steep mountain, with some fertile valleys, lying about ten miles from the Adriatic coast: it has one town, and 7000 inhabitants in all.

The government of San Marino is vested in a General Council of *Anziani*, three hundred in number, and an executive council, or senate of twelve, with a Gonfaloniere, or chief magistrate, who is changed every three months. The other magistrates are called *Capitani*, and changed half-yearly. The council and senate are both composed half of nobles and half of burgesses; but when any affair of extraordinary importance is to be discussed, the general assembly, or Parliament, is convoked, consisting of one member of each family. Civil and criminal justice is administered by a foreigner, a doctor of laws, who is chosen for three years, being the only remnant of the practice which we have seen at one time prevailed in all the communities of Italy.

CHAPTER XXVIII.

SWISS ARISTOCRACIES.

Division of the Subject :—1. **LUCERN**—Feudal History—Early Constitution—Aristocracy established—Sovereign Council—Senate—Aoyers—Self-Election—Aristocracy popular—Consequences in French invasion—Act of Mediation, 1803—New Constitution—Policy of Napoleon—Constitution of 1814.

2. **ZURICH**—Early Aristocracy—Government more exclusive—Council—Senate—Constitution of 1803—of 1814.

3. **BERN**—Early Constitution—Aristocracy introduced—Great Council—Senate—Seizeniers—Aoyers—Constitution of 1803—of 1816—Self-Election—Oligarchy.

4. **GENEVA**—Early History—Mixed Aristocracy—Parties—Grent Council—Senate—Revolution of 1782—Restoration of the old Government—Constitution of 1814—Importance of Geneva.

SEVERAL of the Swiss Cantons have always had governments either purely aristocratical or mixed aristocracies. It would not be profitable to examine minutely the whole of these constitutions, which, generally speaking, bear a close resemblance to one another, having grown up among the same people, in circumstances nearly similar, and in states which formed parts of the same Federal Union. It was chiefly in the larger cantons that the aristocratic polity prevailed; and we shall single out three of them for examination—Lucern, Zurich, and Bern; because the two latter are by far the most important members of the whole Helvetic body, and because the first affords in some respects the example of the purest aristocracy, next to that of Venice, which survived to a recent period of time. To these Geneva may be added, on account of certain peculiarities that belong to it, and on account of its celebrity in the world of science and letters. Lucern, or Luzern, is, in importance, the sixth of the cantons, Bern being the first. The population of Bern is above 400,000 souls; of Zurich, 230,000; of Lucern, 124,000.

1. Lucern joined the confederacy in the year 1332: it has always been a Catholic state, and stands first in importance

of the Catholic cantons. Originally this canton was a feudal seignory under an ecclesiastical superior, the abbot of Lucern, and a number of mesne lords under him, their superior. Its constitution at that period was of a purely democratic kind. The whole community deliberated in common upon the alteration to be made in the laws; upon taxes to be raised, upon questions of peace and war, upon treaties of alliance. The resolutions of the general assembly required to be ratified by a select council composed of eighteen selected burghers, who were changed every six months. The chief magistrate was called the *Aroyer*, and he had jurisdiction in civil matters. The abbot appointed another executive officer, called the *Amman*, who was selected from the people, and with their concurrence. In Lucern, as in the greater part of Switzerland in the thirteenth century, the house of Hapsburg, under their able and politic chiefs, Rodolph and his son Albert, had obtained an overwhelming ascendent; but when, at the beginning of the fourteenth, the three small cantons of Uri, Switz, and Unterwald joined in resisting their oppressors, and gained the famous battle of Morgarten (1315), often termed the Swiss Marathon, the Austrian power was weakened, so that Lucern and other cantons joined them, and finally all had thrown off the yoke.

The former democratic government did not long survive this event. The city or capital of the canton soon obtained an overwhelming influence; and in the city, the more powerful families or nobles. This was the natural consequence of the change that had been brought about. Under the feudal superiority of the abbot, and afterwards under the feudal monarchy of the Austrian family, the government was administered by the joint influence of the prince and the people, the barons holding their influence, as elsewhere, over their vassals, and thus having considerable weight in the general administration of affairs. But when there no longer was a chief, and a foreign chief with his guards, his revenue, his military power, and all the other resources of the imperfect Feudal Union, as the real power resided in the nobles, an aristocratic constitution grew up to maturity. The supreme power came to be vested in a sovereign council of one hundred members, chosen from the five hundred burghers of the city, the country people having no voice whatever in the government. But in fact the power did not reside in even this council at large, for it was divided into two

bodies,—the senate or little council, and the great council. Now, the senate consisted of thirty-six members, who were divided into two bodies of eighteen each, and these alternately exercised the whole power of administration. They chose, or, as it was called, *confirmed* each other, and a few great families had the whole management of these elections; their members succeeded one another, so as to make the places hereditary. In this senate was vested the whole administration of police and of finance, and, in fact, the executive government; for though two avoyers, or chief magistrates, were appointed, they were senators, and they were changed every year. They were chosen by the great or sovereign council of one hundred; but in that council the senate exercised an overpowering influence; for, in the first place, they formed above a third of its whole numbers; next they had the appointment of civil officers in their hands; and lastly, they had also the patronage of all benefices, which were so valuable that two-thirds of the landed property of the country were in ecclesiastical hands. Moreover, the senate was a permanent body, always sitting, while the great council only was convoked upon special occasions. In the senate's hands was all criminal jurisdiction, except that in capital cases the consent of the larger body was required. An appeal in civil suits likewise lay from the one body to the other. However, the voice of the senate in that larger body was sure to be preponderant.

In one respect the powers of the aristocracy in Lucern appear to have suffered some, and even a considerable limitation. If any new tax was to be imposed, or any question decided of peace or war, or of foreign alliance, a general assembly of the burghers was necessary to give the resolution force. There was another restriction, resembling what we may remember to have found in the aristocracy of Venice. The jealousy of the Patrician order provided that father and son, nor any two members of the same family, could not sit at the same time in the senate.

With these restrictions the government of Lucern was a pure aristocracy of an oligarchical aspect, and as such it continued for above five centuries, but without exciting any discontent in the people subject to its control. On the contrary its rule appears to have been popular, like that of Venice, and probably from the same cause, that it pressed lightly upon the middle and lower classes of the community. Accordingly when the hour of trial

came for all the ancient governments of Europe, the public voice was loudly raised in behalf of the existing order of things. All the attempts of the French emissaries to excite discontent signally failed. It was in vain that they spread their invectives against aristocracy and oligarchy; they spoke a language which the subjects of the Lucern patricians did not understand. In vain they offered emancipation from a thralldom which the people had never felt, or tendered them a state of liberty and equality for which they had no taste. Every such offer was rejected, and force was required at once to conquer the people and put down a government which they had so little mind to subvert, that they made its cause their own. The country was held in subjection by military power, with some intervals during the temporary overthrow of the French authorities by the misgovernment of the executive directory and the successes of the Russian and Austrian allies. But when the peace with Austria enabled the Emperor Napoleon to make a settlement of the Swiss affairs, a new constitution was given to Lucern as to the other twelve cantons, by the celebrated Act of Mediation, 19th of February, 1803.

This constitution resembled the others in its general outline, though it was less aristocratic by a great deal. The legislative power, the superintendence of all executive functions, and the nomination to all offices extending over the whole canton, was vested in a Great Council of sixty members. Fifteen of these formed the Little or executive council; and this had the power of proposing measures to the larger body, as well as of appointing all officers whose powers were local only. These fifteen were chosen by the sixty of whom they formed a portion. To elect the sixty, all the citizens of thirty years old if bachelors, or of twenty if married or widowers, and possessing property of thirty pounds value, had voices; and the election was a complicated one, of lot combined with choice, after the fashion of the Italian commonwealths.

It is here to be observed that Napoleon and those able men whom he consulted, adopted as much of the former constitution as they could for the stock on which to engraft their changes. Whoever attentively observes the structure of the greater and lesser councils, with their relations to each other, will perceive that the model of the whole was the former government of the sovereign council and senate.

In 1814, the constitution of Lucern, as well as of the other cantons, underwent material alterations. The supreme power was now and is still vested in two councils, the council of one hundred and the daily council (*quotidien*), the latter being thirty-six members of the former. The whole hundred hold their places for life, and are chosen half by burghers of the city and half by the inhabitants of the country. The council itself names forty of the burgher members and twenty-nine of the country members; the burghers name ten and the country citizens name the remaining twenty-one. The daily council consists of at least ten country members, and the whole thirty-six are chosen by itself from the great council. Beside being a burgher in the town and a citizen in the country, a voter must also pay taxes on a property of sixteen pounds value. Father and son, or two brothers, cannot sit together in either council.

The principal legislative power resides in the great council and the avoyers, its presidents, who are chosen by it from the daily council. All laws proposed by the daily council are adopted or rejected by the great council. All taxes are by it imposed or repealed. Any member, on giving notice to the avoyer, may propose a law, which the great council either rejects at once or remits to the daily council, and it is only on its report or proposal that it can be further considered by the great council. The power of pardoning and all other sovereign attributes reside in the great council. The great council sits three times a year, and oftener if convoked by the daily council, which sits the whole year, and exercises the ordinary powers, executive, judicial, and administrative, of the government.

2. *Zurich*, the second canton in point of extent and importance, was originally an imperial fief, and its capital had early a municipal charter and government. Like the Italian cities its constitution was at first democratic, but afterwards a kind of civic aristocracy, and it had, like them, constant struggles with the feudal nobility of the country. When, in the fourth century, the imperial power was overthrown and the canton joined the Helvetic confederacy, an aristocratic government grew up, though less purely such than in Lucern. As regarded the country it was equally so; for the town, with less than a fifteenth of the inhabitants of the country,

engrossed the entire and exclusive possession of the powers of government. Its burghers, about 2000 in number, had the election of the governing and sovereign council in their hands; and after interposing many obstacles to the admission of new burghers, even to supplying vacancies occasioned by death and extinction of families, they came, in 1661, to a resolution, ever after acted upon, that no more should be admitted on any account. They were divided into thirteen tribes, of which one was noble, and had a great preponderance; for while the others only chose twelve to the great council, the noble tribe chose eighteen. The sovereign council consisted of two hundred and twelve, but was called the council of two hundred; the senate, fifty in number, formed a part of it. The right of exercising trade in the city was most strictly confined to the burghers; all strangers, and even the inhabitants of the canton not being burghers, were excluded. The tribe of nobles never took part in commerce of any description; they had the full right to do so, but regarded it as beneath their rank.

The fifty who composed the senate were twenty-four tribunes and four councillors, chosen by the nobles, with twenty chosen by the sovereign council, to which two burgomasters were added. Twenty-five of the senate administered the government for six months, and the other twenty-five for the rest of the year. The council chose the burgomasters annually, and they were presidents of the senate by turns, each for six months. The legislative authority resided in the council, the judicial in the senate, from which an appeal lay in civil cases only to the council. The only restraint in the senate was a yearly revision, by which they were liable to be changed; but as the senators were fifty in number, and formed a large proportion of the council, this was little likely to happen. The nobles had manifestly a great preponderance in that body, and the government was thus formed on an aristocratic model, though very far from being so pure an aristocracy as that of Lucern.

In 1803, the Act of Mediation changed the form of the constitution, and established a government on exactly the same principles which we have explained in the case of Lucern. The only material difference was in the numbers of the two councils; the greater being composed of one hundred and eighty, the lesser of twenty-five. The latter were chosen by the whole body, and they formed a part of it.

In 1814 a material change took place in this constitution. The exclusive power of the capital was no longer allowed; but all rights of election to the councils were apportioned as near as possible to the population of the different districts into which the canton was divided. The great council returned its number of two hundred and twelve; the little was reduced from fifty to twenty-five; all chosen by the great council from its own body as before. The great council are now to choose one hundred and thirty of its own members; the rest being chosen by the tribes, thirteen choosing two each, one choosing five and the others one each. The members of the little council hold their places for six years; those of the great council hold theirs also for six years, one third going out every two years. The right of voting in the districts or tribes rests in those who in each are enrolled as burghesses; and servants, insolvents, and convicts are alone excluded. The citizen of one parish can be made a burghess in any other.

3. The town of Bern obtained a charter from the emperor in 1218, constituting it a free city. The government was vested in a council, called the two hundred from its original number, but afterwards extended to two hundred and ninety-nine, all chosen from the burghers of the city. To this body all the canton was subject; and it appointed from its own members a senate to administer the executive powers of the state. The general assembly of the burghers elected the council, every one having a vote who was possessed of a house in Bern. The assembly also chose the magistrates. The burghers were divided into four guilds; the chief of each was called *banneret*, or *standard-bearer*, and he had great influence in the elections. By degrees the members of council prolonged their offices during life; and the council afterwards usurped the power of filling up all vacancies, so that the government became aristocratical, or rather an oligarchy, a small number of powerful families obtaining the entire control of affairs. As in Italy, so here many of the feudal barons in the country became burghers of Bern, while others, waging war with the city, were defeated, and forced to sell or surrender their demesnes, which thus gave enlarged wealth and power to the civic aristocracy. At the end of the thirteenth century Rodolph of Hapsburg in vain attempted to subdue the canton, and his son Albert was signally defeated in

a similar attempt ten years after (1298). The Emperor Louis of Bavaria once more invested Bern; but was defeated in the great battle of Laupen in 1339. Friburg and the forest cantons having assisted the Bernese in this war, Bern a few years afterwards, in 1352, joined the Helvetic Confederacy.

The constitution of Bern became gradually more aristocratic, until the meetings of the general assembly were wholly discontinued, and the great council engrossed the whole power of the state. It was in 1682 that the sovereignty was declared to reside in that body; and it was restrained by no check of any kind. In Lucern the great questions of peace and war, of alliances, of taxation, could only, as we have seen, be decided by the General Assembly of the burghers. But no such restriction was imposed upon the council of Bern; it had full authority in all matters whatever, without exception. It consisted, when full, of two hundred and ninety-nine members, and the vacancies could only be filled up when they came to eighty; but the rule was that they must be filled up when they amounted to a hundred. The new members were named partly by the *avoyers*, partly by the *seizeniers*, who were sixteen members of the council appointed yearly by lot, and partly by the accession of the persons claiming to be admitted in right of their offices. The senate consisted of twenty-seven persons, including the two *avoyers*, and all chosen by the great council, out of its own body. The choice was by a complicated ballot, of lot, and selection, after the Italian fashion. The *avoyer* and other magistrates were chosen by the great council: the *avoyers* for life; the other officers for four and six years. The executive government was vested in the senate, which sits daily.

Although the government was, in the strictest sense, aristocratic, it was in great favour with the nation, and must be admitted to have secured the most important objects of all government, and, indeed, of all political society. Müller, no friend of such systems in general, has pronounced it the constitution under which by far the greatest wisdom of administration was displayed for the greatest length of time. Other writers have compared the influence and authority exercised by the patricians to that of guardians and parents over their wards and children; and some have described the relation of the people to the aristocracy as resembling that of clients to their patrons. Accordingly the govern-

ment enjoyed entire confidence and esteem from the people, notwithstanding their exclusion by it from all share in the administration of the public affairs : the French found but little support in their intrigues against it ; and their invasion was as much resisted by the whole nation as if all had borne a part in the management of its concerns.

In 1803 the new constitution was imposed upon Bern by the famous Act of Mediation. In its outline it resembled the former government ; but the great council consisted now of only one hundred and ninety-five members ; the little council retained its former number of twenty-seven. A council of state was added, consisting of the two oldest and two youngest members of the senate. Its office was to watch over the internal and external safety of the state, and report to the other councils.

The most important change introduced into the constitution by this act was the restoration to the community of a voice in the choice of the great council. The *avoyers* were named by the great council out of the senate or lesser council ; the senate was chosen out of the great council, and by it ; the members of the great council were chosen, one-third by the tribes immediately and directly, two-thirds by lot out of lists sent by the councils of qualified persons. The latter council was changed two-thirds every two years.

In 1816 the constitution of Bern was finally settled. The preamble of the constitutional act bears that the object of the authorities in forming the new government is to restore what was valuable in its ancient structure, and, at the same time, to place it in harmony with the wants of the present age—a most wise and salutary view, and which, if steadily pursued, cannot be too much commended. In one most important particular the ancient constitution is changed and improved ; the country, both towns and rural districts, are admitted to a share, though certainly not an equal share, of the administration, formerly confined to the capital. The country is to have ninety-nine members of the great council, the capital two hundred. The qualification of the deputies is fixed at possessing the right of burgesses in a town or parish, being twenty-nine years of age, and having about 700*l.* in property. The right of becoming burgesses of the capital is also opened to the burgesses of the country. Of the ninety-nine country members the council itself chooses twenty-five. The

magistrates of each town choose its deputies; in the country parishes the choice is made by electoral colleges, according to a regulation not to be found in the Constitutional Act, though promised by it. The two hundred deputies of the capital are chosen by an electoral college, composed of the little council, and a committee of sixteen adjuncts taken from the great council. Here, therefore, we have the principle of self-election applied in its entire perfection to two hundred deputies for the town and twenty-five for the country; so that a majority, in the proportion of three to one of the whole members of council, are not elected by the people in any way, but are appointed by themselves. The little council, chosen by the great, and of its own members, consists of twenty-seven. It is subject to annual confirmation, that is, election, and is therefore merely a committee of the whole body. The members of the great council themselves are said to be subject to the same annual confirmation; whereas it is plain that the self-elected majority have at all times the absolute power of excluding from their own numbers any one who in any particular dissents from their opinion or opposes their designs. This annual confirmation, or exclusion, is indeed performed by the council of sixteen, composed of the little council and sixteen assistants, chosen by lot. But suppose every one of the sixteen were drawn of the minority, there would still be a majority composed of twenty-seven, whom the majority of the great council had named and purged of all dissidents. The powers and functions of the two councils are nearly the same as those possessed by the same bodies under the more ancient constitution, which we have already described. The government of Bern may therefore well be deemed aristocratic. The admixture of democratic influence is small indeed.

4. *Geneva*.—This territory was originally under the empire, first of Charlemagne, afterwards of his successors. As their feebleness increased, and lessened their authority, the bishops acquired the ascendent. The sovereigns counterbalanced this by granting privileges to the people of the towns, and fomenting discord between the bishops and the feudal lords, or counts, who governed in the emperor's name. The counts then sold their territorial possessions to the Duke of Savoy, against whom the bishops united with the people. The counts now endeavoured to obtain a share in the episcopal authority, which they could not resist,

and, for this purpose, procured the nomination of their sons and brothers to the sees as they fell vacant. Early in the fourteenth century Charles III. of Savoy had vested in himself an absolute authority over the commonwealth, and he exercised great oppression upon the people. Two parties were now, in consequence, formed, one called the free or patriotic, the other the servile, which took part with the duke. After various struggles Geneva at length formed a treaty with Bern and Fribourg in 1526, and finally established a republican government, with the reformed religion, the duke and the bishops being alike expelled for ever. This led to immediate hostilities with Savoy, in the result of which Geneva was successful, and in 1584 was by treaty united with the Helvetic Confederacy. The last attempt against the state was made by Savoy in 1602, and it was not till 1764 that the Genevan independence was formally acknowledged.

The government, though republican, was aristocratic, or, at least, had a strong mixture of aristocracy. There were four councils: the senate, or lesser council, of twenty-five; the council of sixty, for the management of foreign affairs; the great council, originally of two hundred, but afterwards composed of two hundred and fifty; and the sovereign council, or general assembly, of all citizens twenty-five years old. The sixty were chosen by the senate; the great council was originally elected by the general or popular assembly; but the patrician party, ingratiating themselves with the people, obtained, as they were sure to do, from a class of men ever ready to give their confidence to persons of rank, and never suspecting any abuse of it till too late, the right of election to be taken from the general assembly, and vested in the councils themselves, so that the senate should choose, or, as it was called, confirm the council, and the great council should choose the senate. They likewise, in 1712, obtained from the general assembly a repeal of the law which had been made in 1707, requiring that the assembly should every five years meet to deliberate on the most pressing public interests.

The senate had the power of convoking the great council—of furnishing all magistrates from their own body—of naming the inferior magistrates—of choosing half the great council—of conferring rights of burghership—of superintending the financial administration—and, generally, of exercising the executive and judicial power of the state. The great council chose the senate,

had a veto on all its proceedings, and had the appeal from all its judicial sentences, as well as the general power of pardon. The general assembly, or council, consisted of 1500 burghers, of whom only 1200 could ever attend, the others being foreigners or incapable persons. It met twice a-year—chose the greater magistrates—decided on questions of peace or war, and alliances—had a veto on all legislative acts of the two other councils—and chose half the great council. Four of the senate might be removed yearly, and four syndics were chosen from the senate by the general council; these syndics must be three years out of office before they were re-elected; and, if all the senators were rejected by the general council, four must retire into the great council, and four new members be added, as syndics.

In 1782 a revolution was effected in this republic, already abundantly tinctured with no small mixture of aristocracy. The power of the general council to name half the great council, or council of two hundred, was now taken away, and the great council obtained the right of annually confirming, that is, in fact, of annually choosing the senate. The citizens had hitherto been addicted to clubs, or *circles* as they were termed, political bodies which carried on constant discussions of all public measures, and exercised great influence over the proceedings of the legal and regular councils, as well as over all the administrative officers. These were now strictly prohibited, as were all assemblies, or meetings of the people. The militia was likewise abolished, and the right of bearing arms was taken from the citizens at large.

Great heartburnings and much discontent was the consequence of this important change. The conflicting parties did not scruple to look abroad after the manner of all popular governments, ancient and modern, without any monarchical head; and the defeated faction called in the assistance of Savoy or Sardinia and France, in 1789. The former government was restored and the restrictions of 1782 were removed. The pure aristocracy then established became now mixed with democratic institutions, though the aristocratic principle still manifestly prevailed in the composition.

This aristocracy was abolished by the new and still existing constitution established in 1814. All distinction of ranks is now abolished; no noble class is recognised; and the rule is that all Genevans are equal in the eye of the law. The government is

vested in two councils; a representative council of two hundred and fifty, and a lesser, or council of state, of twenty-eight members. The former is elected by all persons twenty-five years old, who pay six pounds in direct taxes and are not in arrear, and who are armed and equipped for the militia, or have some lawful exemption from that service. The clergy, the members of the university, the academy, and other similar establishments, are entitled to vote, whether they pay the fixed sum in taxes or not. Thirty members of the great council go out yearly. No more than five persons of the same name and family can sit in it at one time. The members of the council of state are named by the great council, but are not removeable unless the great council pleases, which it may yearly, to exercise a scrutiny, in which case whatever members have one hundred and twenty-six votes against them, go out of the council of state and retire into the great council, which chooses others of its number to succeed them. More than two of a name or family cannot sit in the council of state. The power of proposing measures to the great council is vested in the council of state, together with the direction of the finances, that is, the receipt and expenditure of the taxes voted by the great council. The executive functions generally of the government reside in the council of state; such as the direction of foreign affairs, subject to the great council approving or rejecting any treaties made.

The great or representative council has the legislative power, on the proposition of measures by the council of state. It also raises or remits, or changes all taxes, appoints to all the more considerable offices, and receives yearly the council of state's report of its administration.

There are four syndics or executive magistrates named yearly from the council of state and the great council. This election is by ballot.

The republic of Geneva is, except that of San Marino, the smallest state in territory and population in the world, having only 125 square miles of surface and 25,000 inhabitants. But its cultivation of letters and philosophy, and the eminent men whom it has given to the world in both departments, give an interest to whatever concerns it, far beyond the importance of its extent, population, and wealth. Few countries of much greater

consideration have contributed more useful works to the diffusion of literary and scientific knowledge: few have raised so many ingenious and learned men who devote themselves to a diligent pursuit of learning, and to the education of youth in its various departments.

N O T E.

THERE now only remain the subjects of Democracy and Mixed or Limited Monarchy to complete this branch of Political Philosophy, and so give the whole that belongs to the *Structure of Government*. Its *Functions*, comprising Political Economy, will follow.

Of *Democracy* we have already treated incidentally only, and in the connexion which it necessarily bears with *Aristocracy*. We have been obliged, however, to give the Athenian Constitution, partly in order to show how groundless the notion is of those who class it with the ancient Aristocratic Commonwealths, partly because it was inconvenient to separate it from the other ancient Governments, when it threw so great a light, by comparison, upon their structure and working.

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